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HIGHWAY SAFETY ACT OF 1983

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1108

TO AMEND VARIOUS PROVISIONS OF LAW TO PROVIDE FOR MORE EFFECTIVE HIGHWAY AND MOTOR VEHICLE SAFETY REGULATIONS AND ENFORCEMENT AND FOR OTHER PURPOSES

MAY 26, JUNE 14, AND JULY 13, 1983

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HIGHWAY SAFETY ACT OF 1983: DRUNK AND DRUGGED DRIVING

THURSDAY, MAY 26, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m. in room SR-253, Russell Senate Office Building, Hon. John C. Danforth presiding.

Staff members assigned to these hearings: Karen B. Phillips, professional staff member; and Loretta Dunn, minority staff counsel.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Tens of thousands of Americans die each year in highway accidents. According to Government figures, there were 45,000 highway fatalities in 1982, a modest improvement over the death toll for 1981. Motor vehicle accidents cost society $57.2 billion in 1980 in terms of property damage, lost productivity, medical costs, emergency services, and other costs. It is clear that highway accidents represent a major national problem.

To address this crucial issue, Senators Pell, Packwood, Hatch, and I have sponsored S. 1108, the Highway Safety Act of 1983. This bill provides a comprehensive approach to the highway safety problem.

Title I of S. 1108 deals with technological aspects of safety. S. 1108 would incorporate the most up to date technological advances in automobiles and trucks to save lives and reduce injuries and property damage. Title I would also encourage States to enact laws requiring the use of child passenger safety seats, which would help to further reduce the death and injury toll from accidents.

One area where much progress has been made during the last few years is drunk driving. Much more needs to be done, however; drunk driving accidents continue to claim the lives of 25,000 Americans each year. We have seen examples of this problem recently here in the Washington area, first with the tragic killing of 16-year-old John Svec as he walked along the road, and also with the story of a man who was charged three different times during a 24-hour period with driving while intoxicated.

Making motor vehicles safer, as title I of S. 1108 would do, would bring a substantial improvement in the drunk-driving accident statistics. Title II of this bill takes additional steps to remedy the problem by building on the provisions contained in the drunk-driving legislation enacted last year.

Under title II, States with a minimum legal drinking age of 21 would become eligible for Federal grants to enforce drunk-driving laws. States would also be encouraged to take action against drugged driving by including such activities as one of the criteria States may meet in order to receive Federal incentive grants under last year's drunk-driving legislation.

Title II would also encourage States to update their traffic and highway recordkeeping systems by providing Federal grants for this purpose. This will enhance State enforcement of drunk and drugged-driving laws as well as general highway safety laws. This will also improve the ability of many States to work with the computerized National Driver Register established last year.

Title III addresses motor carrier safety. The bill would improve the safety enforcement capabilities of the Department of Transportation while also taking steps to insure that new entrants into the truck and bus industry meet meaningful safety fitness standards.

Lastly, title IV deals with hazardous materials transportation. The bill would strengthen the federal regulatory system while encouraging improved coordination among all levels of Government and with private industry. Increased emphasis would be placed on hazardous materials training programs and increased resources would be devoted to enforcement of hazardous materials transportation regulations.

This morning, the committee begins a series of three hearings on S. 1108. Today's hearing will focus on the provisions of title II. On June 14, the motor carrier safety provisions of title III will be addressed, and on June 22 we will examine hazardous materials transportation issues and the provisions of title IV.

Senators Packwood and Hollings have statements for the record which I will insert at this point.

[The statements and bill follow:]

OPENING STATEMENT BY THE CHAIRMAN

This morning, the Commerce Committee begins a series of three hearings on S. 1108, the Highway Safety Act of 1983.

This bill addreses a number of critical highway safety problems facing our nation. S. 1108 takes steps to make improved automobile safety technology available to American consumers as well as improved information about the relative safety of various automobiles. The bill also builds on drunk driving legislation enacted during the last Congress, strengthens Department of Transportation motor carrier safety enforcement authority, and strengthens the Federal system of hazardous materials transportation regulation while providing for increased coordination among all levels of government.

I commend Senator Danforth on his longstanding commitment to the improvement of highway safety and his continuing efforts to promote safety, as demonstrated in this comprehensive bill.

OPENING STATEMENT BY SENATOR HOLLINGS

Today, the Committee is examining Title II of S. 1108, Senator Danforth's bill, the "Highway Safety Act of 1983." I welcome the opportunity to explore new ways to combat the problem of drunk driving. Because of my concern about the victims of drunk drivers, I was a cosponsor of Senator Danforth's Federal drunk driving bill last session. Implementation of that Act has already begun. It is my hope that this federal drunk driving legislation, acting as an impetus to state legislatures, will result in fewer alcohol-related deaths on our highways.

Title II of S. 1108 has three major provisions:

The first amends section 408, the drunk driving incentive grant program, to include rehabilitation and treatment programs for persons convicted of driving while under the influence of drugs as an additional means of qualifying for an incentive grant.

The second section provides for incentive grants to states which have statutes providing for (a) minimum legal drinking age of 21 and (b) criminal penalties for persons serving alcohol to individuals under the age of 21 (known as "dram shop" laws).

The third provides for incentive grants to states which have computerized recordkeeping systems which compile data on traffic accidents.

The witnesses today will be discussing all three provisions. I am sure the Committee will benefit from their expertise. I look forward to working with Senator Danforth on the continuing problem of drunk driving.

II

98TH CONGRESS
1ST SESSION

S. 1108

To amend various provisions of law to provide for more effective highway and motor vehicle safety regulations and enforcement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20 (legislative day, APRIL 18), 1983

Mr. DANFORTH (for himself, Mr. PELL, and Mr. PACKWOOD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend various provisions of law to provide for more effective highway and motor vehicle safety regulations and enforcement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Highway Safety Act of 1983".

TITLE I

SHORT TITLE

SEC. 101. This title may be cited as the "Automotive Safety Improvement Act of 1983".

PURPOSE

SEC. 102. This title is part of the continuing effort by Congress to address the critical highway safety problem facing this Nation.

FINDINGS

SEC. 103. The Congress finds that—

(1) the Department of Transportation should be given explicit direction as to actions to be taken to save lives, reduce injuries, and decrease consumer costs of accidents;

(2) the current trend toward purchases of smaller and lighter passenger cars increases the importance of and the need for effective occupant crash protection;

(3) comfortable and convenient crash protection should be provided for occupants of new passenger automobiles;

(4) child passenger safety seats have proven lifesaving and injury-prevention capabilities, and States should be encouraged to require their use in passsenger automobiles; and

(5) crashworthiness information should be available upon the introduction of each new passenger car model, and a systematic effort must be made to disseminate this information.

DEFINITIONS

SEC. 104. (a) For purposes of this title, the term "passenger automobile" means a motor vehicle with motive power, except that the term does not include a multipurpose passenger vehicle, a motorcycle, or a trailer designed for carrying 10 persons or less.

(b) As used in subsection (a) of this section, the term "multipurpose passenger vehicle" means a motor vehicle with motive power, other than a trailer, which is designed to carry 10 persons or less and which is constructed either on a truck chassis or with special features for occasional off-road operation.

BUMPER STANDARDS

SEC. 105. Section 102 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1912) is amended to read as follows:

"SETTING OF STANDARDS

"SEC. 102. (a) Each passenger motor vehicle shall meet the bumper standard damage criteria of 49 CFR sections 581.5(c)(1) through 581.5(c)(7) and section 581.5(c)(9) when impacted by a pendulum-type test device in accordance with the procedures of 49 CFR section 581.7(b) under the conditions of 49 CFR section 581.6, at an impact speed of 3 miles per hour, and when impacted by a pendulum-type test device in accordance with the procedures of 49 CFR section

581.7(a) at 5 miles per hour, followed by impacts into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward, then longitudinally rearward, under the conditions of 49 CFR section 581.6, at 5 miles per hour.

"(b) Each vehicle shall meet the following damage criteria when tested in accordance with the requirements of subsection (a) of this section:

"(1) the exterior surfaces of the vehicle, except for the bumper face bar, shall have no separations of surface materials, paint, polymeric coatings, or other materials from the surface to which they are bonded, and no permanent deviations from their original contours 30 minutes after completion of each pendulum and barrier impact; and

"(2) 30 minutes after the completion of each pendulum and barrier impact test, the bumper face bar shall have—

"(A) no permanent deviation greater than ¾ inch from its original contour and position relative to the vehicle frame; and

"(B) no permanent deviation greater than ⅜ inch from its original contour on areas of contact with the barrier face or the impact ridge of the pendulum test device measured from a straight line connecting the bumper contours adjoining any such contact area.

"(c) The damage criteria specified under subsections (a) and (b) of this section shall be applicable to—

"(1) all passenger motor vehicles manufactured in or imported into the United States; and

"(2) any item of passenger motor vehicle equipment so manufactured or imported;

except that such criteria shall not apply to any vehicle which is intended solely for export (and is so labeled or tagged on the vehicle or equipment itself and on the outside of the container, if any) and which is exported.

"(d)(1) In promulgating any bumper standard under this section, the Secretary may for good cause shown—

"(A) exempt partially or completely any multipurpose passenger motor vehicle; or

"(B) exempt partially or completely any make, model, or class of passenger motor vehicle manufactured for special use, if such standard would unreasonably interfere with the special use of such vehicle.

"(2) To the maximum extent practicable, a bumper standard promulgated by the Secretary shall not preclude the attachment of detachable hitches.

"(e) This bumper standard shall be applicable to passenger motor vehicles manufactured on or after September 1, 1984.

"(f) Nothing in this section shall be construed to prohibit the Secretary from increasing the impact speeds specified in subsection (a) of this section.

"(g) All rules establishing, amending, or revoking a bumper standard under this title shall be issued pursuant to section 553 of title 5, United States Code, except that the Secretary shall give interested persons an opportunity for oral presentation of data, views, or arguments, and the opportunity to make written submissions. A transcript shall be kept of any oral presentation.".

SIDE IMPACT PROTECTION

SEC. 106. (a) Not later than 60 days after the date of enactment of this Act, the Secretary shall reopen the rulemaking proceeding terminated on July 12, 1982, to implement Federal Motor Vehicle Safety Standard 214 (49 CFR 571.214). The Secretary shall—

(1) establish performance criteria for occupant protection in side impact under dynamic crash tests; and

(2) extend the applicability of such Standard to light trucks, vans, and multipurpose passenger vehicles.

(b) The final regulations implementing such Standard shall be issued not later than July 1, 1984.

CHILD PASSENGER SAFETY SEATS

SEC. 107. Chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"§ 409. Child passenger safety seats

"(a) Subject to the provisions of this section, the Secretary shall make grants to those States which have in effect a law requiring the proper use of child safety seats meeting the requirements of Federal Motor Vehicle Safety Standard 213 (49 CFR 571.212) by any child in a highway motor vehicle who—

"(A) has not attained an age of 5 years or such lesser age as may be established by such law; or

"(B) has a weight of less than 40 pounds.

"(b) No State may receive a grant under this section in more than 1 fiscal year.

"(c) The amount of a grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (d) of this section shall equal 10 per centum of the amount apportioned to such State for each of the fiscal years 1984 and 1985 under section 402 of this title.

"(d) A State is eligible for a grant under this section if—

"(1) on the date of enactment of this section, the State has adopted or has in effect a law or regulation which complies with the requirements of subsection (a) of this section; or

"(2) after the date of enactment of this section, the State adopts or puts in effect a law or regulation which complies with the requirements of subsection (a) of this section.

"(e) There are hereby authorized to be appropriated to carry out this section, out of the Highway Trust Fund, $10,000,000 for the fiscal year ending September 30, 1984, and $20,000,000 for the fiscal year ending September 30, 1985. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.".

(b) The analysis for chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"409. Child passenger safety seats.".

(c) The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 409 of title 23, United States Code, as added by subsection (a) of this section, not later than July 1, 1983. The Secretary shall allow public comment on the proposed regulations to encourage maximum citizen participation. The final regulations shall be issued and published in the Federal Register not later than January 1, 1984. Such regulations shall become effective on the date on which they are published in the Federal Register.

AUTOMATIC CRASH PROTECTION

SEC. 108. Part A of title I of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391–1410b) is amended by adding at the end thereof the following:

"SEC. 126. (a) Each manufacturer of passenger automobiles shall install airbags in each passenger automobile manufactured on or after September 1, 1985.

"(b) The Secretary, in carrying out his responsibilities under section 201(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941(c)), shall develop and disseminate data to inform the public about the performance and benefits of airbags.".

ANTILACERATIVE WINDSHIELD

SEC. 109. (a) The Secretary shall, within 60 days after the date of enactment of this Act, amend Federal Motor Vehicle Safety Standard Numbered 205 to require manufacturers of automobiles to install antilacerative windshields in all passenger automobiles manufactured on or after September 1, 1984.

(b) For purposes of this section, the term "antilacerative windshield" means a high penetration-resistant windshield whose interior and exterior surfaces are made of item 1 laminated glass, to which a layer of polyurethane is bonded on the side of the windshield facing inside the occupant compartment.

TRUCK OCCUPANT PROTECTION

SEC. 110. (a) The Secretary shall make a full investigation and study of crash protection for truck occupants. Such study shall examine potential and known hazards to truck occupants and means of improving truck-occupant safety. This study shall also include potential performance standards to be met by truck manufacturers. The Secretary shall submit to Congress a report on the findings of this investigation and study not later than September 30, 1984.

(b) There are authorized to be appropriated for fiscal year 1984 such sums as are necessary to undertake the study required by subsection (a) of this section.

HIGH-MOUNTED REAR STOPLAMPS

SEC. 111. Part A of title I of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391–1410b), as amended by section 108 of this title, is further amended by adding at the end thereof the following:

"SEC. 127. (a)(1) Not later than 60 days after the date of enactment of this section, the Secretary shall amend Federal Motor Vehicle Safety Standard 108 (49 CFR 571.108) to provide that each manufacturer of passenger automobiles equip each passenger automobile manufactured on or after September 1, 1984, with a high-mounted rear stoplamp. Each such stoplamp shall be activated upon application of the service brakes of the passenger automobile.

"(2) Such amendment also shall include such requirements as the Secretary considers necessary or appropriate relating to the positioning of such high-mounted rear stoplamps, the effective projected luminous area of such stoplamps, and any other matters regarding the installation and operation of such stoplamps.

"(b) Such amendment shall take effect not later than 120 days after the date of enactment of this section.".

AUTOMOBILE CRASHWORTHINESS DATA

SEC. 112. Part A of title I of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391–1410b), as amended by sections 108 and 111 of this title, is further amended by adding at the end thereof the following:

"SEC. 128. (a) Not later than 60 days after the date of enactment of this section, the Secretary shall promulgate a Federal motor vehicle safety standard establishing passenger automobile crashworthiness rating and labeling requirements in accordance with this section. Such amendment shall take effect not later than 120 days after such date of enactment, and shall apply to passenger automobiles manufactured on or after September 1, 1984.

"(b) The standard required in subsection (a) of this section shall provide a method for calculating a uniform numerical rating which will enable consumers to compare the crashworthiness of different automobile models.

"(c)(1) The standard required in subsection (a) of this section shall also require that—

"(A) each automobile manufacturer certify to the Secretary, not later than 90 days before any passenger automobile model produced by such manufacturer is offered for sale to consumers, the crashworthiness rating achieved by that model;

"(B) each passenger automobile manufacturer affix a label to each passenger car indicating that model's crashworthiness rating; and

"(C) the Secretary prepare a booklet for purposes of disseminating comparative information regarding the crashworthiness of passenger cars.

"(2) The Secretary may include in the booklet to be prepared pursuant to paragraph (1)(C) of this subsection such other information relating to the purchase and ownership of passenger automobiles as the Secretary determines may be useful to consumers. Copies of such booklet shall be furnished by the Secretary to passenger automobile manufacturers for distribution to passenger automobile dealers.

"(d) The labeling and certification required under this section shall be based upon performance criteria established by the Secretary relating to—

"(1) crash protection for occupants with and without manual seatbelts;

"(2) windshield mounting;

"(3) windshield zone intrusion;

"(4) fuel system integrity; and

"(5) such other aspects affecting crashworthiness as the Secretary may consider appropriate.".

(b) Section 201 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941) is amended by adding at the end thereof the following:

"(f) Not later than July 1, 1984, the Secretary shall by rule establish procedures requiring automobile dealers to make available to prospective automobile purchasers information developed by the Secretary and provided to the dealer which contains data comparing the crashworthiness of passenger automobiles.".

STUDY OF SAFETY-RELATED DEVICES

SEC. 113. (a) The Department of Transportation shall conduct a study of the effectiveness of existing regulations regarding emergency warning devices required to be carried on buses, trucks, truck tractors, and motor-driven vehicles which are involved in emergency situations. Such study shall also investigate the potential costs and benefits of requiring passenger automobile operators to carry emergency warning devices, and shall examine the relative benefits of various types of warning devices in enhancing highway safety. A report containing the findings of this study shall be submitted to the Congress not later than April 1, 1984.

(b) There are authorized to be appropriated for fiscal year 1984 such sums as are necessary to undertake the study required by this section.

TITLE II

SHORT TITLE

Sec. 201. This title may be cited as the "Drunk and Drugged Driving Prevention Act of 1983".

PURPOSE

Sec. 202. This title is part of the continuing effort by Congress to encourage States to take effective action to reduce traffic safety problems resulting from persons driving under the influence of alcohol or other drugs.

FINDINGS

Sec. 203. The Congress finds that—

(1) it is in the public interest to reduce deaths and injuries resulting from drunk and drugged driving;

(2) public awareness of the drunk and drugged driving problem must continue to be increased;

(3) there is a direct correlation between the minimum drinking age and alcohol-related crashes;

(4) States should be encouraged to raise the minimum legal drinking age for persons consuming all alcoholic beverages to 21 in order to reduce the death rate of young Americans; and

(5) States should be encouraged to modernize traffic record systems in order to facilitate enforcement of highway safety rules and regulations.

DRUGGED DRIVING

SEC. 204. (a) Section 408(a) of title 23, United States Code, is amended by striking "alcohol" and inserting in lieu thereof "alcohol or other drugs.".

(b) Subsection (c)(1) of section 408 is amended by inserting "and drug" immediately after "alcohol".

(c) Section 408(f) of title 23, United States Code, is amended—

(1) by striking the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(2) by adding at the end thereof the following:

"(8) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while under the influence of drugs.".

MINIMUM LEGAL DRINKING AGE

SEC. 205. (a) Chapter 4 of title 23, United States Code, as amended by section 107 of this Act, is further amended by adding at the end thereof the following:

"§410. Minimum legal drinking age

"(a)(1) Subject to the provisions of this section, the Secretary shall make grants to those States which have in effect a law—

"(A) which sets the minimum legal drinking age for persons consuming all alcoholic beverages in such State at 21 years of age;

"(B) which provides that any person who is licensed by a State, or any employee of any such person, who sells, vends, gives away, or otherwise supplies any alcoholic beverage in any quantity to (i) any individual under 21 years of age, or (ii) to any person who is or appears to be intoxicated, shall be guilty of a misdemeanor; and

"(C) which provides that any person who procures, sells, gives away, or otherwise supplies any alcoholic beverage in any quantity to (i) any individual under 21 years of age, or (ii) to any person who is or appears to be intoxicated, shall be guilty of a misdemeanor, except that this subparagraph shall not apply to the parent or guardian of any such individual.

"(2) Such a law shall be deemed to comply with paragraphs (1) (B) and (C) of this subsection although it provides that the law does not apply to any person supplying alcoholic beverages for medical purposes or to any physician who administers alcoholic beverages to a patient for purposes of medical treatment.

"(3) Such a grant may be used only by a recipient State to enforce alcohol traffic safety programs.

"(b) No State may receive a grant under this section in more than 2 fiscal years.

"(c) The amount of a grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (d) of this section shall equal 10 per centum of the amount apportioned to such State for each of the fiscal years 1984 and 1985 under section 402 of this title. Such a grant shall be in addition to any basic or supplemental grant received by such State under section 408 of this title.

"(d) A State is eligible for a grant under this section if—

"(1) on the date of enactment of this section, it has adopted or has in effect a law or regulation which meets the requirements of subsection (a) of this section; or

"(2) after the date of enactment of this section, the State adopts or puts in effect a law or regulation which meets the requirements of subsection (a) of this section.

"(e) There are hereby authorized to be appropriated to carry out this section, out of the Highway Trust Fund, $10,000,000 for the fiscal year ending September 30, 1984, and $20,000,000 for the fiscal year ending September 30, 1985. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.".

(b) The analysis for chapter 4 of title 23, United States Code, as amended by section 107 of this Act, is further amended by adding at the end thereof the following:

"410. Minimum legal drinking age.".

(c) The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 410 of title 23, United States Code, as added by subsection (a) of this section, not later than July 1, 1983. The Secretary shall allow public comment on the proposed regulations to encourage maximum citizen participation. The final regulations shall be issued and published in the Federal Register not later than October 1, 1983. Such regulations shall become effective on the date on which they are published in the Federal Register.

COMPUTERIZATION OF TRAFFIC RECORD SYSTEMS

SEC. 206. (a) Chapter 4 of title 23, United States Code, as amended by sections 107 and 205 of this Act, is further amended by adding at the end thereof the following:

"§ 411. Computerization of traffic record systems

"(a) Subject to the provisions of this section, the Secretary shall make grants to those States which implement accident-reduction projects through use of computerized safety recordkeeping systems designed to produce data regarding accident incidents or potential sites for accident incidents. Any such grant may only be used by a recipient State to establish and maintain computerized safety recordkeeping systems.

"(b) No State may receive a grant under this section in more than 3 fiscal years.

"(c) The amount of a grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (d) of this section shall equal 20 per centum of the amount apportioned to such State for each of the fiscal years 1984, 1985, and 1986 under section 402 of this title.

"(d) A State is eligible for a grant under this section if—

"(1) it certifies to the Secretary that it has in operation a computerized traffic safety recordkeeping system and identifies proposed means of upgrading the system; or

"(2) it provides to the Secretary a plan for establishing and maintaining a traffic safety recordkeeping system.

"(e) There are authorized to be appropriated to carry out this section, out of the Highway Trust Fund, $20,000,000 for the fiscal year ending September 30, 1984; $25,000,000 for the fiscal year ending September 30, 1985; and $30,000,000 for the fiscal year ending September 30, 1986.".

(b) The analysis for chapter 4 of title 23, United States Code, as amended by sections 107 and 205 of this Act, is further amended by adding at the end thereof the following:

"411. Computerization of traffic record systems.".

(c) The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 411 of title 23, United States Code, as added by subsection (a) of this section, not later than September 1, 1983. The Secretary shall allow public comment on the proposed regulations to encourage maximum citizen participation. The final regulations shall be issued and published in the

Federal Register not later than March 1, 1984. Such regulations shall become effective on the date on which they are published in the Federal Register.

OVERSIGHT

SEC. 207. The appropriate authorizing committees of Congress shall conduct periodic oversight hearings on the implementation and effects of this legislation, not less often than annually for the first 3 years following the date of enactment of this Act.

TITLE III

SHORT TITLE

SEC. 301. This title may be cited as the "Motor Carrier Safety Act of 1983".

PURPOSES

SEC. 302. The purposes of this title are to promote the safe operation of commercial motor vehicles in or affecting interstate commerce, to minimize dangers to the health of operators of commercial motor vehicles while they are operating such vehicles, and to assure increased compliance with the commercial motor vehicle safety and health rules, regulations, standards, and orders issued pursuant to this title.

FINDINGS

SEC. 303. The Congress finds that—

(1) it is in the public interest to enhance commercial motor vehicle safety and thereby to reduce highway fatalities, injuries, and property damage;

(2) improved commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations;

(3) enhanced protection of the health of commercial motor vehicle operators is in the public interest; and

(4) interested State governments can provide valuable assistance to the Federal Government in assuring that commercial motor vehicle operations are conducted safely and healthfully.

DEFINITIONS

SEC. 304. For purposes of this title, the term—

(1) "commerce" means trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, or which affects trade, traffic, or transportation between a place in a State and a place outside of such State;

(2) "commercial motor vehicle" means any self-propelled or towed vehicle used on the highways in

commerce principally to transport passengers or cargo—

(A) if such vehicle has a gross vehicle weight rating of 10,000 or more pounds;

(B) if such vehicle is designed to transport more than 10 passengers, including the driver; or

(C) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended (49 U.S.C. 1801 et seq.);

(3) "employee" means—

(A) a driver of a commercial motor vehicle (including an independent contractor while in the course of personally operating a commercial motor vehicle);

(B) a mechanic;

(C) a freight handler; or

(D) any individual other than an employer;

who is employed by a commercial motor carrier and who in the course of this employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any

State, or a political subdivision of a State who is acting within the course of such employment;

(4) "employer" means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it in commerce, but such term does not include the United States, any State, or a political subdivision of a State;

(5) "person" means one or more individuals, partnerships, associations, corporations, business trusts, or any other organized group of individuals;

(6) "Secretary" means the Secretary of Transportation; and

(7) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas.

DUTIES

SEC. 305. Each employer and employee shall comply with the safety and health rules, regulations, standards, and orders issued pursuant to this title which are applicable to his own actions and conduct.

REGULATORY AUTHORITY AND STANDARDS

SEC. 306. (a) The Secretary shall establish and revise such rules, regulations, standards, and orders as may be necessary in order to further the purposes of his title. The Secretary shall, where practicable, consider costs and benefits before revising existing rules, regulations, standards, or orders. Such rules, regulations, standards, and orders shall be directed toward assuring that—

(1) commercial motor vehicles are safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed upon drivers of commercial motor vehicles do not impair a driver's ability to operate safely;

(3) the physical condition of drivers of commercial motor vehicles is adequate to enable them to drive safely; and

(4) the operation of commercial motor vehicles does not create deleterious effects on the physical condition of such drivers.

(b)(1) The Secretary shall promulgate any such rule or regulation within a period of 1 year after the date of commencement of any proceeding respecting such rule or regulation. If the Secretary determines that any such promulgation will not be completed within such time period, the Secretary shall immediately notify the Congress and shall furnish the reasons for the delay, information regarding the resources assigned, and the projected completion date, for any such proceeding. If such rule or regulation has not been promulgated within 1 year after the date of the commencement of any proceeding with respect to such rule or regulation, the Secretary shall supply the Congress with current data regarding the information specified in the preceding sentence, and shall provide the Congress with such information at the end of every 60-day period thereafter during which the proceeding remains incomplete.

(2) All rules, regulations, standards, and orders issued under this section shall be promulgated in accordance with section 553 of title 5, United States Code (without regard to sections 556 and 557 of such title), except that the time periods specified in paragraph (1) of this subsection shall apply to such promulgation.

(c) The Secretary may waive in whole or in part application of any rule, regulation, standard, or order established under this section with respect to any person or class of persons if the Secretary determines that such waiver is in the public interest and is consistent with the safe operation of commercial motor vehicles. Any waiver permitted under this subsection shall be published in the Federal Register, together with the reasons for such waiver. Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of title 5, United States Code.

(d)(1) The Secretary and the Director of the National Institute for Occupational Safety and Health shall, in consultation with the Secretary of Labor, undertake a study of health hazards to which employees engaged in the operation of commercial motor vehicles are exposed, and shall develop such materials and information as are necessary to enable such employees to carry out their employment in a place and manner free from recognized hazards that are causing or are likely to cause death or serious physical harm. The study shall include recommendations regarding the most appropriate method for regulating and protecting the health of operators of commercial motor vehicles. Such study shall be submitted to the Congress within 1 year after the date of enactment of this Act.

(2) For purposes of carrying out the provisions of this subsection, there are authorized to be appropriated out of the Highway Trust Fund to the Secretary for fiscal year 1984 not to exceed $1,500,000.

(e) The Secretary, the Director of the National Institute for Occupational Safety and Health, and the Secretary of Labor shall coordinate their activities under this section to ensure adequate protection of the safety and health of operators of commercial motor vehicles. Such Secretaries and Director shall attempt to minimize paperwork burdens to assure maximum coordination, and to avoid overlap or the imposition of undue burdens on persons subject to such rules, regulations, standards, and orders.

GENERAL POWERS

SEC. 307. (a) The Secretary may conduct, directly or indirectly, such research, development, demonstrations, and training activities as the Secretary considers appropriate to develop rules, regulations, standards, and orders authorized to be promulgated under section 306 of this title, to design and develop improved enforcement procedures and technologies, and to familiarize affected persons with such rules, regulations, standards, and orders.

(b) In carrying out the Secretary's functions under this title, the Secretary is authorized to perform such acts (including conducting investigations and inspections; compiling statistics; making reports; issuing subpenas; requiring production of documents, records, and property; taking depositions; holding hearings; prescribing recordkeeping and reporting requirements; and carrying out and contracting for such research, development, testing, evaluation, and training) as the Secretary determines necessary to carry out the provisions of this title, or rules, regulations, standards, or orders issued pursuant to section 402 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 2302), the Secretary may delegate to a State such functions respecting the enforcement (including investigations) of the provisions of this title or rules, regulations, standards, or orders issued pursuant thereto as the Secretary determines appropriate to carry out the provisions of this title.

INSPECTIONS AND WARRANTS

SEC. 308. (a)(1) To carry out the Secretary's responsibilities under this title, agents of the Secretary are authorized to enter upon, inspect, and examine facilities, equipment, operations, and pertinent records without advance notice, in accordance with the provisions of paragraph (2) of this subsection. Any such agent of the Secretary shall display proper credentials when requested and may consult with employers and employees and their duly authorized representatives, and shall offer them a right of accompaniment.

(2)(A) A warrant under this paragraph shall be required for any entry or administrative inspection (including impoundment of motor vehicles or motor vehicle equipment) authorized by this section, except if such entry or inspection is—

(i) with the consent of the employer or agent of the employer in charge of the business, establishment, or premises;

(ii) in situations involving inspection of motor vehicles where there is reasonable cause to believe that the mobility of the motor vehicle makes it impractical to obtain a warrant;

(iii) in any other exceptional or emergency circumstances where time or opportunity to apply for a warrant is lacking;

(iv) for access to and examination of books, records, and any other documentary evidence which can be easily altered, manufactured, or falsified; and

(v) in any other situations where a warrant is not constitutionally required.

(B) Issuance and execution of administrative inspection warrants shall be as follows:

(i) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this section and of impoundment of motor vehicles or motor vehicle equipment appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this title, or rules, regulations, standards, or orders issued thereunder, sufficient to justify administrative inspections of the area, establishment, premises, records, or motor vehicles, or contents thereof, in the circumstances specified in the application for the warrant.

(ii) A warrant shall be issued only upon an affidavit of an officer, or representative of the Secretary having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is a reasonable basis for believing they exist, he shall issue a warrant identiying the area, establishment, premises, or motor vehicle to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall—

(I) identify the items or type of property to be impounded, if any;

(II) be directed to a person authorized under this section to execute it;

(III) state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof;

(IV) command the person to whom it is directed to inspect the area, establishment, premises, records, or motor vehicle identified for the purpose specified, and where appropriate, shall direct the impoundment of the property specified;

(V) direct that it be served during the hours specified in it; and

(VI) designate the judge or magistrate to whom it shall be returned.

(iii) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing by the Secretary of a need therefor, the judge or magistrate allows additional time in the warrant. If property is impounded pursuant to a warrant, the person executing the warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and the applicant for the warrant.

(iv) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

DUTY TO INVESTIGATE COMPLAINTS; PROTECTION OF COMPLAINANTS

SEC. 309. (a) The Secretary shall timely investigate any nonfrivolous written complaint alleging that a material violation of any rule, regulation, standard, or order issued under this title is occurring or has occurred within the preceding 60 days. The complainant shall be timely notified of findings resulting from such investigation. The Secretary shall not be required to conduct separate investigations of duplicative complaints.

(b) Notwithstanding the provisions of section 552 of title 5, United States Code, the Secretary shall not disclose the identity of complainants unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary shall take every practical measure within his authority to assure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

PENALTIES

SEC. 310. (a) If the Secretary finds that a violation of sections 305 through 313 of this title has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall fix a reasonable time for abatement of the violation, specify the appropriate civil penalty, if any, and specify the actions which the Secretary proposes to be taken in order to avoid subsequent similar violations. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of his intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5, United States Code, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

(b) Except as otherwise provided in this subsection, any person who is determined by the Secretary to have committed an act which is a violation of recordkeeping requirements issued by the Secretary pursuant to this title shall be liable to the United States for a civil penalty not to exceed $500 for each offense. Each day of a violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses relating to any single recordkeeping violation shall not exceed $10,000. If the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, he may assess a civil penalty not to exceed $10,000 for each offense: *Provided, however,* That except for recordkeeping violations, no civil penalty provided under this title shall be assessed against an employee for violations of this title unless the employee is an operator of a commercial motor vehicle and the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000. The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violation, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

(c) The Secretary may require any violator served with a notice of violation to post a copy of such notice or statement thereof in such place or places and for such duration as the Secretary may determine appropriate to aid in the enforcement of this title.

(d) If, upon inspection or investigation, the Secretary determines that a violation, or combination of violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of his commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard. Subsequent to the issuance of such order, opportunity for review shall be provided in accordance with section 554 of title 5, United States Code, except that such review shall occur not later than 10 days following issuance of such order.

(e) Any person other than an employee who knowingly and willfully violates any provision of this title or who knowingly and willfully makes any false statement or representation required under this title shall, upon conviction, be subject for each offense for a fine not to exceed $25,000 or imprisonment for a term not to exceed 1 year, or both, except that, if such violator is an employee, he shall only be subject to penalty if, while operating a commercial motor vehicle, his activities have led or could have led to death or serious injury, in which case he shall be liable, upon conviction, for a fine not to exceed $2,500.

(f) The Secretary shall promulgate regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in notices and orders.

(g) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States court of appeals in the circuit wherein the violation is alleged to have occurred or where he has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were supported by substantial evidence, or were otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

(h) The Secretary may obtain enforcement, including injunctive relief, of any penalties or orders issued under this section by applying to the United States district court for the district where the violation occurred or where the cited party has his principal place of business or residence. In addition to granting enforcement, the district court may assess an appropriate penalty for noncompliance and award such further relief as justice and public safety may require.

(i) All penalties and fines imposed under this section shall be deposited into the Treasury as miscellaneous receipts.

(j) In any action brought under this section, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(k) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

REPRESENTATION BEFORE THE COURTS

SEC. 311. Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the General Counsel of the Department of Transportation may appear for and represent the Secretary in all proceedings and in any civil litigation brought under this title. Prior to making any such appearance and representation, the General Counsel of the Department of Transportation shall consult with and inform the Attorney General of the United States of his activities pursuant to this section.

STATE REGULATIONS

SEC. 312. (a) Except as may otherwise be provided in this Act or any other law, any State agency may adopt additional or more stringent safety rules, regulations, standards, or orders for commercial motor vehicle safety if such rules, regulations, standards, or orders are not inconsistent with the Federal rules, regulations, standards, and orders issued under this title.

(b) Nothing in this title shall affect existing hours-of-service regulations of any State applying to commercial motor vehicle operations occurring wholly within that State, unless the Secretary affirmatively finds upon review of a State's hours-of-service regulations that such regulations—

(1) materially diminish commercial motor vehicle safety or the health and safety of employees;

(2) are not required by compelling local conditions; or

(3) unduly burden interstate commerce.

If the Secretary makes such an affirmative determination, the Secretary may require such State to adopt Federal hours-of-service regulations.

ANNUAL INSPECTION

SEC. 313. (a) Each commercial motor vehicle shall be required to submit to and pass an annual inspection of all safety equipment required under part 393 of subchapter B of chapter 3 of title 49, United States Code.

(b) The Secretary shall, by rule, establish Federal standards to be met by required equipment on commercial motor vehicles. The Secretary shall also establish—

(1) a procedure for State implementation of the inspection requirement;

(2) an appropriate fee to be charged for the inspection of each vehicle;

(3) a mechanism by which the fees collected would be utilized by State authorities to fund the required inspections; and

(4) a reporting requirement specifying inspection information to be furnished to the Secretary on an annual basis.

(c) The Secretary shall initiate the rulemaking required under subsection (b) of this section not later than September 30, 1983. The final regulations shall be issued and published in the Federal Register before September 30, 1984. These regulations shall become effective on the date on which they are published in the Federal Register.

CERTIFICATION OF SAFETY FITNESS

SEC. 314. (a) The Secretary and the Interstate Commerce Commission shall jointly establish a procedure to determine the safety fitness of persons seeking new or additional operating authority as motor carriers of property or passengers under sections 10922 and 10923 of title 49, United States Code. Such a procedure shall include—

(1) specific requirements to be met by such persons to prove safety fitness;

(2) a means of determining whether such persons meet the safety fitness requirements specified under paragraph (1); and

(3) specific time deadlines for action by the Department of Transportation and the Interstate Commerce Commission in making safety fitness determinations.

(b) Not later than July 1, 1984, the Secretary and the Interstate Commerce Commission shall submit to Congress a copy of the procedure established under subsection (a) of this section.

HEAVY TRUCK RESEARCH

SEC. 315. (a) The Secretary shall undertake a comprehensive study of safety characteristics of heavy trucks and the unique problems related to heavy trucks. Such study shall include an examination of the handling, stability, and crashworthiness of heavy trucks.

(b) There are authorized to be appropriated not to exceed $1,200,000 for the fiscal year ending September 30, 1984, and not to exceed $1,400,000 for the fiscal year ending September 30, 1985, to conduct the research required under subsection (a) of this section.

OVERSIGHT

SEC. 316. The appropriate authorizing committees of the Congress shall conduct periodic oversight hearings on the effects of this title no less often than annually for the first 3 years following the date of enactment of this Act, to ensure that this title is being implemented according to congressional intent and the purposes of this title.

TITLE IV

SHORT TITLE

SEC. 401. This title may be cited as the "Hazardous Materials Transportation Act Amendments of 1983".

PURPOSES

SEC. 402. The purposes of this title are to—

(1) promote the public safety by providing for increased coordination among the various levels of government and greater consistency among Federal, State and local rules and regulations;

(2) encourage and assist State and local governments to play a major role in the prevention of hazardous materials transportation incidents by delegating the enforcement of certain Federal regulations; and

(3) provide for greater assistance to State and local governments in responding to such incidents through coordinated and well-planned advice and assistance at the time of the incident, training and technical assistance programs, and planning grants to encourage the adoption of coordinated incident-response programs.

FINDINGS

SEC. 403. The Congress finds that—

(1) the transportation of hazardous materials can create severe hazards to the public safety;

(2) such transportation is nonetheless essential to commerce;

(3) in the interest of uniformity, the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) provides for the preemption of State and local governmental regulation of hazardous materials transportation to the extent that it is not consistent with Federal requirements and regulations;

(4) despite this preemption, when serious hazardous materials incidents occur, State and local govern-

ments necessarily have the primary responsibility for emergency response; and

(5) increased coordination and greater consistency between the Federal Government and State and local governments would assist in the prevention of hazardous materials transportation incidents and in the overall ability of State and local governments to respond to such incidents.

DEFINITION

SEC. 404. Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. 1802) is amended by redesignating paragraphs (3), (4), (5), (6), and (7), and all references thereto, as paragraphs (4), (5), (6), (7), and (8), respectively, and by inserting the following new paragraph immediately after paragraph (2):

"(3) 'incident' means any event occurring in the transportation of hazardous materials or a transportation-related function such as loading, unloading, packaging, or stowage which has led, or poses an imminent threat of leading, to a release of hazardous materials which could result in a serious risk to health, safety, or property;".

PREVENTION OF AND RESPONSE TO HAZARDOUS MATERIALS INCIDENTS

SEC. 405. The Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) is amended by inserting "Subtitle A" immediately after "TITLE I—HAZARDOUS MATERIALS", and by adding at the end thereof the following:

"Subtitle B

"FEDERAL TRAINING PROGRAMS FOR INCIDENT PREVENTION AND RESPONSE

"SEC. 120. (a) EVALUATION.—(1) The Secretary and the Director of the Federal Emergency Management Agency, in coordination with other agencies with responsibilities relating to hazardous materials transportation, shall evaluate—

"(A) programs conducted by Federal, State, and local agencies and private organizations which provide training to shippers, carriers, inspectors, and enforcement personnel involved in the transportation of hazardous materials with respect to compliance with and enforcement of rules, regulations, standards, and orders promulgated by the Secretary under the authority of this title; and

"(B) programs conducted by Federal, State, and local agencies and private organizations which provide training to agencies or organizations responsible for responding to incidents involving hazardous materials transportation.

"(2) Not later than 5 months after the date of enactment of this section, the Secretary and the Director shall submit interim report to the Congress on the results of such evaluation. Not later than 10 months after the date of enactment of this section, the Secretary and the Director shall complete such evaluation and submit the results of such evaluation to the Congress.

"(b) TRAINING PROGRAMS.—If, as a result of the evaluation conducted pursuant to subsection (a) of this section, the Secretary and the Director determine that existing training programs for the transportation of hazardous materials are inadequate or that there is needless duplication among such programs, the Secretary and the Director may develop appropriate training programs and make recommendations as to methods to improve existing programs. The Secretary and the Director shall, upon request, provide to State and local agencies and private organizations a description of training programs and such other assistance as is appropriate to assist such agencies and organizations in fulfilling their hazardous materials and incident-response training needs.

"(c) INFORMATION DISSEMINATION.—The Secretary or the Director, as they consider appropriate, shall maintain an information dissemination service, which shall provide instructional materials in the training, skills, and knowledge necessary to assist Federal, State, and local agencies and private organizations in training personnel in safe and proper methods for the transportation of hazardous materials and for responding to incidents. Such information service shall identify specific elements with respect to training, equipment, and methodologies necessary and useful in preventing incidents, and in responding to incidents when they occur. In addition, training programs shall be identified which are determined, through the evaluation required by subsection (a) of this section, to be useful for training shippers, carriers, inspectors, or enforcement personnel with respect to hazardous materials transportation safety and for training response personnel. The Secretary and the Director may take all necessary measures to improve the coordination and effectiveness of all such Federal, State, local, and private training programs.

"(d) TRAINING CENTERS.—As part of the effort to improve the coordination of incident-prevention training programs, the Secretary, to the extent practicable, shall establish or encourage the establishment of regional training centers.

"STATE REGULATION AND GRANTS TO STATES

"SEC. 121. (a) GRANTS.—Under the terms and conditions of this section, and subject to the availability of funds, the Secretary is authorized to make grants to States for the development and implementation of programs for the enforcement of Federal rules, regulations, standards, and orders applicable to hazardous materials transportation pursuant to the provisions of this title and consistent State rules, regulations, standards, and orders.

"(b) STATE PLAN.—(1) The Secretary shall, after notice and opportunity for comment by interested parties, formulate procedures for any State to submit a plan whereby the State agrees to adopt, and to assume responsibility for enforcing, rules, regulations, standards, and orders issued under this title and consistent State rules, regulations, standards, and orders. Such plan shall be approved by the Secretary if the Secretary determines that the plan promotes the objectives of this title, and the plan—

"(A) designates the State agency or agencies responsible for administering the plan throughout the State;

"(B) contains satisfactory assurances that such agency has or is taking steps pursuant to State law to have the legal authority, resources, and qualified personnel necessary for the enforcement of such rules, regulations, standards, and orders;

"(C) gives satisfactory assurances that such State will devote adequate funds to the administration of such plan and enforcement of such rules, regulations, standards, and orders;

"(D) provides a right of entry and inspection sufficient to enforce the provisions of this title; and

"(E) provides that such State agency will adopt such uniform reporting requirements and use such uniform forms for recordkeeping, inspections, and investigations as may be established and required by the Secretary.

"(2) If a plan submitted under paragraph (1) of this subsection is rejected, the Secretary shall provide the State with a written explanation of the Secretary's action, and shall permit the State to modify and resubmit its proposed plan for approval, in accordance with the procedues formulated pursuant to such paragraph.

"(c) WITHDRAWAL OF APPROVAL.—The Secretary shall, on the basis of reports submitted by the State agency, and on his own inspections, make a continuing evaluation of the manner in which each State with a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording notice and opportunity for comment, that a State plan previously approved is not being followed or that it has become inadequate to assure the enforcement of rules, regulations, standards, or orders issued under this title, the Secretary shall notify the State of withdrawal of approval of such plan. Upon receipt of such notice, such plan shall cease to be in effect. Any State aggrieved by a determination of the Secretary under this subsection may seek judicial review pursuant to chapter 7 of title 5, United States Code. The State may, however, retain jurisdiction in any case commenced before the withdrawal of the plan whenever the issues involved do not directly relate to the reasons for the withdrawal of approval of the plan.

"(d) REIMBURSEMENT.—By grants authorized under this section, the Secretary shall reimburse any State in an amount not to exceed 50 per centum of the costs incurred by that State in that fiscal year in the development and implementation of programs to enforce hazardous materials transportation rules, regulations, standards, and orders issued under this title and consistent State rules, regulations, standards, and orders. The Secretary may allocate amounts appropriated for grants to support such programs among the States whose applications for grants have been approved pursuant to such criteria as may be established by the Secretary.

"ROUTING AND PRENOTIFICATION

"SEC. 122. (a) AUTHORITY.—(1) The Secretary may, in consultation with State, local, and regional governments and with appropriate Federal agencies, and as required to protect the safety of the American public, establish—

"(A) regulations with respect to the routing of hazardous materials being transported in interstate commerce; and

"(B) a prenotification system which would inform State or local governments in advance of the timing, nature, and routing of hazardous materials shipments through the jurisdictions.

"(2) If the Secretary issues regulations pursuant to paragraph (1) of this subsection, such regulations shall provide for the participation by State, local, and regional governments in selecting preferred routes and modes of transportation of hazardous materials within their respective jurisdictions.

"(3) In determining whether to promulgate regulations under this subsection, the Secretary shall consider—

"(A) whether any mode represents an unacceptable level of risk to safety with respect to the transportation of hazardous materials;

"(B) various factors affecting the safety of any given route, including population density, design characteristics of the route, and adjacent land uses;

"(C) the implementation of additional protective measures whenever hazardous materials are transported through areas of particularly high risk;

"(D) the social, economic, and commercial impacts of routing restrictions;

"(E) the relative hazard potential of specific hazardous materials as a factor determining the need for selective routing; and

"(F) the feasibility, cost, and desirability of establishing, and the problems of implementing, a prenotification system.

"(b) CONSULTATION.—In establishing regulations under subsection (a) of this section, the Secretary shall seek the advice of various groups interested in the safety of the transportation of hazardous materials, including shippers, carriers, and users of hazardous materials and bulk package or container manufacturers; organizations which represent employees engaged in the transportation of hazardous materials; citizens' and environmental groups; and private organizations concerned with transportation safety or the provision of emergency services in response to a major accident involving the transportation of hazardous materials.

"EMERGENCY RESPONSE PLANNING GRANTS

"SEC. 123. (a) PLANNING GRANTS.—In order to promote the development of coordinated and effective emergency-response programs for incidents at the State and local levels, the Director of the Federal Emergency Management Agency may, taking into account consistency with the national contingency plan (as revised pursuant to the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) (42 U.S.C. 9601 et seq.), make emergency-response-planning grants to units of State, regional, and local governments. Such grants shall be used, among other things, to—

"(1) assess the present response capabilities of each emergency-response agency within the scope of the study area in terms of the adequacy of trained personnel, equipment, and information systems, and to determine the most cost-effective means for upgrading such capabilities;

"(2) determine at what point and to what extent each such agency will become involved in the response to a given incident;

"(3) determine which of such agencies will be the lead agency for responding to a given type of incident at any given location;

"(4) define the role of each such agency in responding to any incident; and

"(5) establish a communications network that will permit onsite interagency communications as well as operational and command communications.

"(b) RULES AND REGULATIONS.—The Director shall, within 12 months after the date of enactment of this section, establish such rules and regulations as the Director considers necessary for the administration of emergency-response-planning grants described in subsection (a) of this section. Any such regulations shall provide that—

"(1) the Federal share of any such planning grant shall not exceed 50 per centum of the cost of such project; and

"(2) not less than 25 per centum of the funds obligated for such grants shall be used to make planning grants to units of regional or local government.

"(c) COORDINATED RESPONSE PROGRAMS.—To the extent possible, the Director shall encourage the use of such planning grants to promote planning for the establishment of coordinated regional emergency-response programs.

"RESEARCH AND DEVELOPMENT

"SEC. 124. The Director of the Federal Emergency Management Agency, in coordination with the Secretary, may conduct research and development activities designed to improve the capabilities of Federal, State, local, and private agencies and organizations responsible for responding to an incident. Such activities may include programs to—

"(1) encourage the development and demonstration of new and innovative techniques in responding to incidents;

"(2) evaluate existing techniques and programs for responding to incidents; and

"(3) promote the development and adoption of minimum standards for training, equipment, coordination, information, and other resources related to responding to incidents.

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 125. There are authorized to be appropriated to the Secretary such sums as may be necessary for the purposes of section 121 of this subtitle. In addition, there are authorized to be appropriated to the Federal Emergency Management Agency such sums as may be necessary for the purposes of section 123 of this subtitle.".

REPORTING SYSTEM AND DATA CENTER

Sec. 406. Section 109(d) of the Hazardous Materials Transportation Act (49 U.S.C. 1808(d)) is amended—

(1) by inserting "(1)" immediately before "The Secretary";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(3) by adding at the end thereof the following:

"(2) Nothing in this subsection shall be construed to limit the authority of the Secretary to enter into a contract with a private entity for use of a supplemental reporting system and data center operated and maintained by such entity.".

CONFORMING AMENDMENTS

SEC. 407. Sections 110, 111, and 115 of the Hazardous Materials Transportation Act (49 U.S.C. 1809, 1810, and 1812) are amended by striking "title" wherever it appears and inserting in lieu thereof "subtitle" in each such place.

OVERSIGHT

SEC. 408. The appropriate authorizing committees of the Congress shall conduct periodic oversight hearings on the implementation and effects of this title no less often than annually for the first 3 years following the date of enactment of this Act.

○

Senator DANFORTH. The first witness is John Volpe, who is Chairman of the Presidential Commission on Drunk Driving, and of course former Secretary of Transportation.

STATEMENT OF GOV. JOHN A. VOLPE, CHAIRMAN, PRESIDENTIAL COMMISSION ON DRUNK DRIVING

Mr. VOLPE. Thank you very much, Mr. Chairman.

I appreciate this opportunity, as Chairman of the Presidential Commission on Drunk Driving, to comment on title II of S. 1108. My comments will be brief and I shall submit additional remarks for the record.

The Commission strongly supports raising the legal drinking age to 21. The Surgeon General has reported, as I am sure you probably know, that life expectancy has increased over the past 75 years for every age group except one—those between 15 and 24. Their death rate is higher today than it was 20 years ago, and the leading single cause of death for this age is drunk driving.

Seventeen States have established 21 as the legal drinking age, and those States that have raised it in the past 5 years have experienced impressive declines in teenage deaths from drunk driving.

The Commission will continue to urge States, as we have been doing, to adopt the minimum 21-year legal drinking age as this bill recommends.

Another recommendation of the Commission urges States to enact dram shop laws establishing liability against any person who sells or serves alcoholic beverages to an individual who is visibly intoxicated. Consequently, we support that provision in the proposed legislation. At present, 20 States have such statutes and 12 use case law which has the same effect.

Closely related to that is the matter of the open container of liquor in a vehicle. We recommend States make such a practice illegal and we suggest that it be incorporated in your bill. Presently, 19 States have such statutes.

While it is not my purpose to become involved in the question of the necessity of additional Federal appropriations for fighting drunk driving, the Presidential Commission does support the improvement and modernization of traffic recordkeeping and implementation of a computerized National Driver Register.

Testimony before our Commission proved conclusively that too many drivers who have been involved in alcohol-related accidents merely obtain licenses in other States to continue their death-threatening habit of driving after drinking. By computerizing and upgrading our national and State systems, we can remove these people from our streets and highways.

A survey in 1975 indicated 41 States wanted an immediate online response service. Now, I might mention, Mr. Chairman, that as Secretary of Transportation just about a dozen years ago I started to push for a computerized national driver register. There is some indication that the wheels grind rather slowly at times. But whatever encouragement we can give to the States to accomplish this will help meet a major goal of the Presidential Commission—the establishment of a State and national computerized traffic system and driver register.

This past January, seven persons were killed and three others seriously injured—and I can give you many examples, but this is just one—on the Connecticut Turnpike when a tractor-trailer slammed into a toll booth, creating an inferno of stopped vehicles. The driver of the truck at the time of the accident had a suspended license dating from February 1982. He had never paid the reinstatement fee, nor did he get his license back.

From 1965 until 1982 he had had 15 citations for speeding and 4 moving violations other than speeding in North Carolina. His driving license had been suspended five times and revoked once. The driver had been employed by the trucking firm 2 months after the date of his suspension in February 1982, when his license was not yet reinstated. A national computerized driver register would have had him off the highways long before this tragic death toll occurred.

That is merely one of a number of examples we could cite. Time limitations, Mr. Chairman, I understand prevent me from dwelling at length on other recommendations of the Presidential Commission, but I welcome any questions you may have and I have additional information that we will submit for the record.

Thank you.

Senator **Danforth**. Well, Mr. Secretary, thank you very much.

There was a decline last year in traffic fatalities, and some feel that the increased attention given to the problem of drunk driving has been at least a part of the cause of the improved situation. Do you have a view on that? Do you think that the increased public attention in Congress and State legislatures and citizens groups and so on has had an effect with respect to fatalities and injuries?

Mr. **Volpe**. Mr. Chairman, the reduction of over 5,300 lives that were not killed last year and are living in 1983, in my mind there is no doubt that the actions of the Congress or various States, some of which was induced, if I may say so, Mr. Chairman, by citizen groups, action groups throughout the country that have really worked at this and worked very hard—some of these women's groups particularly have sat on, I am sure, your doorstep or the doorsteps of many other legislators, both national and State legislators, until they get a yes, yes, I will vote for the bill.

And the fact is that what the Commission has done is served as a catalyst, coordinated and worked with these organizations trying to raise money for them or help them to get money to support their efforts. So there is no question in my mind that this has produced a substantial reduction, the largest reduction in 39 years except for the oil embargo year of 1974.

Senator **Danforth**. Well, I think oftentimes we overstate what can be accomplished by legislation. My own view is that in the area of auto safety, and specifically in the area of drunk driving, the reduction of incidents of people being killed or injured is very closely related to the attention that it does get from government and improved law enforcement, improved tools for law enforcement agencies speedily being able to revoke or suspend driver's licenses, really tough enforcement, and the perception of the public that if they are caught they are not just going to be zipping back out the revolving door again, but that something is going to happen to them, that they are going to lose their licenses as a result of it.

And so I think that it is very worthwhile pursuing legislation and keeping attention by hearings, by the work of your Commission, particularly by citizens groups, focused on the problem.

I noticed that our legislature in my State of Missouri has had before it drunk driving legislation. Now, to date they have not qualified for the incentive that we offered them in the bill last year.

But the point is that the fact that they even address the question is a result of the bill that we did pass last year in the Congress, so I think we gave them a little push forward, recognizing that it is primarily within the purview of the State legislatures to deal with law enforcement itself, but providing that little impetus that is necessary for them to get the show on the road.

I would like you to comment, if you would, on the drinking age, 18, 21. Did your Commission focus on the difference in drinking age and did you quantify the effect of increasing the drinking age to 21?

Mr. Volpe. Yes, we did, Mr. Chairman. If I may just comment briefly on your comments just now, which I thought were very pertinent, and that is that the new laws, the stricter enforcement, are all very good. On the other hand, that is something which will help in the short run.

In the long run, we are going to reduce the number of deaths on our highways, from drunken drivers particularly, when we change the attitudes in this country, which are not the same in many other countries in the world, and that is when we come to the realization that drinking and driving are not socially acceptable.

We have got to make it socially unacceptable. This is true in quite a few other countries. Yes, we did get to the point of the age 21. We made the recommendation that the age limit should be raised to age 21, and we found that in all those States which during the Vietnam era reduced the age from 21, which it was in many States, to 18 because of the comment that, well, if they are old enough to fight then they should be old enough to purchase liquor, and we found that in every single case the number of deaths definitely went up when they reduced it to 18.

The fact is that in those States that have increased it back up to 21, in every case the number of deaths have gone down, in some cases as high as 60 percent, in other cases 40 percent, 28 percent, and some States 12 percent and 14 percent. So that there is a definite record of improvement in the situation where the legal drinking age or purchasing age, I suppose we should say, has been increased to 21.

And some States have—Rhode Island almost passed it this year. One branch of the legislature did and the other branch did not. I talked to the Governor of Rhode Island and he thought he was going to get it, but it did not come through.

So we are going to be stepping up our efforts in trying to be sure that as much pressure is exerted with the statistics—after all, legislators are convinced by statistics and not because they like the color of your eyes or what have you. So we feel very convinced that that is the way to go.

Senator Danforth. I think that making the factual case is very important. I know that the Insurance Institute for Highway Safety found that any State that raises the drinking age to 21 can expect nighttime fatal crashes among 18- to 20-year-olds to drop by about 28 percent. Does that comport with your information?

Mr. VOLPE. As an average, yes. There are some that are higher than that. The statistics show that on a Friday or a Saturday night, generally an average of 1 in 10 drivers of cars coming in the opposite direction are drunk.

I can tell you that in one Midwestern city—I will not name it—I was being driven back to the airport after addressing the National Council on Alcoholism while I was secretary and had been told that one out of every four drivers coming in the opposite direction was drunk. I became a real believer because on the way to the airport on a six-lane expressway, which unfortunately did not have underpasses or overpasses, a driver all of a sudden came down on our side of the expressway, and we saw two headlights coming our way. And I can assure you, I said a few prayers very, very quickly.

Fortunately, he was so drunk that he was not driving very fast, and the driver of the station wagon that we had given funds to that community to buy in our research work during that 3-year period of our alcohol safety action project was a very good driver and forced the car against the curb, stopped, and went to the car, opened the door, expecting to pull the fellow out. He did not have to pull him out; the fellow fell to the ground.

In fact, we found that his blood alcohol concentration was 0.26. In other words, he was not drunk; he was stone drunk, and a little more and I think he would have been just completely out of the picture.

But the fact is that these roadblocks are helping also, where they are done constitutionally. Now, they can be done in such a way that—in one case in Massachusetts they were declared unconstitutional. In a couple of other cases they were declared to be within the scope of the law. And in Salt Lake City, I guess it was—I have been in so many cities around the country—I went through one of the roadblocks.

And they, if they are done properly, there is no reason why, if they do not discriminate, why those cannot also help to reduce the number of deaths.

Senator DANFORTH. Did your Commission focus at all on drugged driving or did you focus exclusively on drunk driving?

Mr. VOLPE. We stayed completely with the drunk driving because that was our mandate from the President in the Executive order.

Senator DANFORTH. Senator Lautenberg.

OPENING STATEMENT BY SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you, Mr. Chairman.

I want to congratulate you for holding this hearing on this critical issue of combating deaths on our Nation's highways of drunk or drugged driving. As we approach this Memorial Day weekend and the period in which many of our young people hold their school proms and year-end celebrations, this issue takes on extreme importance.

Title II of S. 1108 would encourage States to adopt a minimum legal drinking age of 21, as my State of New Jersey did in 1982.

The New Jersey Legislature has adopted a resolution urging Delaware to come into conformity with our limit.

A similar problem exists with New York State, with an age limit of 19. At present New Jersey is combating what is known as border slaughter, as 19- and 20-year-olds drive long distances in search of legal purchase and consumption of alcohol and drive the long distance back home, and some do not make it.

There are many fronts on which to fight this battle against the tragic loss of life on our Nation's highways. We in New Jersey are proud of our road system, but remain vitally concerned for the safety of those who travel those roads.

Raising the minimum drinking age, having tough laws that are swift and effectively enforced, and maintaining reliable highway safety data are part of the campaign. Ultimately—you said something here, Governor, and I thought you touched a key note—our society has to address this problem by a change of values.

It is encouraging to note that prestigious figures to our young people, professional athletes and others, are getting involved in stressing that it is cool to stay sober and alive. And I am pleased that we are going to have Senator Pell testify, and his leadership was vital in the adoption of drunk driving legislation in 1982.

And I want to complete my statement, Mr. Chairman, if I may, by complimenting Governor Volpe. I have known you a long time. You were in public life before I and I congratulate you not only on the good work you did in the years that you were in various offices, but in this particular area.

I think it is essential, when you see the tragedy brought on families by murder with a vehicle. It is second to none in terms of the influence and the result on the family. We had an incident in New Jersey not too long ago where a driver with a trailer-truck passed through a red light, killed two young girls in a car, had numerous other offenses, and got a suspended license—his license was in suspension, and he got, I believe, a suspended sentence and to report to probation.

A significant alcohol level was in his bloodstream. There we make a mockery of the whole thing and we invite this kind of tragedy.

I was at a political convention, statewide in our State, while I was on the campaign trail last year, and one accomplishment signaled by this political group—I hate to admit it, it was the Young Democrats—that 19 was enough. And I did not understand what the slogan was that was hanging on the walls that 19 was enough to raise the drinking age, and they considered this a significant accomplishment.

These are very responsible young people, working hard for the betterment of values in our society. But this became a key issue, and I frankly was distressed that was the principal focus, when there were so many other things to be concerned about.

Governor, you talked about a national data bank, and since I come from the computer industry, it is a relatively complicated, but certainly accomplishable thing. I wonder what you do when you find out that someone has been a violator in various States. Does that then become—and forgive this elementary question, Mr. Chairman—does it then become the Federal authorities' responsibility to lift the license and administer the punishment? Does it then become a Federal crime if we go this route?

Mr. **Volpe**. No; it would not, Senator. The fact is that we are hopeful, of course, as you know, for the Congress has appropriated funds to set up in four States, model States I guess you would call them, set up a computerized operation that would be hooked up with a national computerized register.

The fact is that from my understanding of it, the Federal Government would not have a bank. A State, my State of Massachusetts, could ask the other 49 States, has Joe Jones ever had a record of his arrest for any purpose insofar as his driving is concerned, whether it is drunk driving or other violations? And that information is not made available, under the understanding that I have at least, it would not be made available to the Federal Government, so that you have a register that some people feel might be utilized for other purposes.

It would go to the State that asks for the information, so that they could respond in less than 5 minutes. They would know—and you have been in the industry, and you would know—exactly what that man's background or that woman's background has been with regard to their driving habits, and instead of waiting 2 or 3 weeks, as is the case now on a mail system, and you are going to keep that person waiting there for 2 or 3 weeks to determine whether or not you can give him or should give him the license.

So no, it would not be a Federal operation. It would be the States that would handle this, and I believe in my judgment that is where it belongs because that is where it happens. That is where the prosecutors are and everything else.

Senator **Lautenberg**. How do you then get uniform enforcement? The problem is that some States are lenient and there is opportunity sometimes, with crowded calendars and that sort of thing, to dismiss these things very lightly. And I agree with you that the ultimate jurisdiction has to rest with the States, and it is a fairly easy proposition to have what we will call for the purposes of this discussion a central switch that can access the various data bases around the country. That certainly can be accomplished and you can get it back in minutes.

But I think the enforcement thing is the big problem, and unless somehow or another each State regards this problem seriously enough, to really punish those violators or to create laws that will prohibit, if possible, this condition, I fear that we are going to be fighting an uphill battle for a long time.

I wanted to ask you a question about whether your Commission found this problem that I talked about: Different age, minimum age levels for drinking, whether that was a serious problem? Can an individual State succeed if their bordering States have lower age drinking levels? Do you have any recommendations on that score?

Mr. **Volpe**. That has been a bone of contention and a problem since way back when I was Governor. I talked to the Governor of New York back then, the late Nelson Rockefeller, and their age at that time was 18 and we were trying to raise ours and we thought that if we did it, especially with neighboring States such as those that border ours, that it would certainly be much more effective.

Unfortunately, he told me, John, I have talked to the leaders on both sides of the aisle and none of them will support it, so there is really nothing I know—there is no point in my introducing it.

I would only say that I think the States ought to be given an opportunity, and I am a firm believer in the carrot approach and not the stick approach. If you give States something in addition to what they normally would receive for highway safety and so forth, that the chances of the public outcry—and the public outcry is out there today, I can assure you.

I can tell the difference from 12, 13 years ago when I was fighting for many of these same things, that the support we got then was nothing like what it is today. I think the support today, both by the grassroots organizations I indicated and the media—in Oklahoma City we had four television stations covering our hearings. Two stayed all day, two stayed a half a day. Twelve years ago if I got one TV station to come for 10 minutes, I thought I was doing well.

The print media was very highly represented. The radio was highly represented. The next morning I was asked to do three TV shows in 2 hours. Try it sometime. It is quite an experience.

But I am one of those who feel that you ought to give the States the opportunity to do the job themselves, but if the States—if a few States, for instance, let us say 40 States do it and 10 just refuse to do it, then maybe the Federal Government ought to step in. I think, however, that in the first instance we ought to give them a chance to do it themselves.

Senator LAUTENBERG. You said that or you inferred that there were other nations that dealt better with this problem. I have traveled a lot in my former life as a businessman, and I saw problems of drunk driving throughout Europe in a very serious proportion.

I am wondering. The United States is not the highest in fatalities per passenger mile.

Mr. VOLPE. We have the best record, as a matter of fact, per 100 million miles traveled. But that does not deny the fact that we still killed 45,000 people last year.

Senator LAUTENBERG. Absolutely, and that is a record that is enviable to have.

What nations deal with it in better fashion, and what are the kinds of approach?

Mr. VOLPE. We are in the process right now of updating some of the information we have on various other countries. Sweden has been a leader in this area. I understand the last 2 or 3 years perhaps that is changing somewhat, and one of the Commission members happens to be going there in about 2 weeks, so I have asked him to come back with the real data.

We can get it by the mail, but we wonder whether or not sometimes, whether it is exactly what you want. But he is going there personally on a speaking engagement and will come back with up to date information.

Australia is another country: Seat belt usage, for instance, which helps a great deal in this area. We are probably one of the poorest nations as far as seat belts are concerned, only 11 or 12 percent, which is just about half of what it was a dozen years ago. Instead of going up, we have gone down.

And so some States, of course, are trying to pass mandatory seat belt usage. None have been too successful, but hopefully that will come along. But overall, they are very, very tough in some of those countries, I am sure you must know, Senator, 6 months jail term for a first offense.

Now, I am not one of those who feels that, particularly for a younger person who has been a clean living and fine youngster—to throw him in jail is not going to make him a better driver, nor a better citizen. And there are cases when, for the young man or whoever he is, he steps in and he all of a sudden, well, he is not sorry for what he did at all; he may need something by way of jail.

I think a judge ought to be given some flexibility.

Senator LAUTENBERG. Thank you very much, Mr. Volpe.

Thank you, Mr. Chairman.

Senator DANFORTH. Senator Trible.

Senator TRIBLE. I have no questions.

Senator DANFORTH. Governor, you have some television cameras that you are facing and you are the chairman of the Presidential Commission on Drunk Driving. I am going to ask you, if you will, to make a 30-second or 1-minute comment to the people that are graduating from high school. We are going to have in the next week or so—we have already had some—an enormous number of people who are going to graduate from high school and are going to go out celebrating.

And as you pointed out earlier, the willingness of the media, as well as the citizens groups, to concentrate on the question of drunk driving and to spell out the consequences not only for the individual who drives him or herself but for other people who are placed at risk, really does have an effect on saving people's lives.

So just in case they are interested in using this opportunity at this particular moment to communicate with the young people, hundreds of thousands of them, maybe millions, who are graduating from high school in the next week or two, I wonder if you could just very, very succinctly give them a message.

Mr. VOLPE. I will try. I would say that the young people graduating and going to proms or other parties where there is going to be drinking ought to pay attention to some of their peers who have been organized into Students Against Drunk Driving, doing a tremendous job, and learn more about what alcohol can do to them. And beer, one bottle of beer is just as—has just as much alcohol as a cocktail or 6 ounces of wine.

So if they are going to go to a prom and drink or a party and drink, I would hope they would get a van with a dozen of the students going together with their dates and then have them returned home by that same van, so that they are not driving. Or if they are going to drive, have one person in the car that is not going to drink.

That will save lives.

Senator DANFORTH. Thank you very much, Governor.

Senator LAUTENBERG. Can I add just one quick statement, Mr. Chairman? I was struck again by the comment the Governor made in terms of the social acceptability of alcohol, of drinking, as reaching a level in life when that is a good thing to do.

I have several daughters, but my youngest one is just graduating from high school this next week. I am the commencement speaker, and one of the things that I will be talking about is this point precisely.

However, as an example, when she turned 16 she asked to have a party at home, and I said that was fine, my wife and I agreed. And she said, well, can we have some punch with some wine in it or something like that. I said absolutely not.

If you think your arriving at your 16th year means that you think your parents are approving of drinking, you are absolutely mistaken. We are not going to serve beer, we are not going to serve wine. If your friends want to come, they can dance, they can have a good time. But alcohol of any sort is out as far as I am concerned.

And I think what happens is there is a tendency on the parents' part to say, OK, this child has reached a level of maturity now and it is signaled by the fact that drinking is introduced into their life. And I think it is sinful and ultimately very destructive, and I think that these kinds of things in terms of social patterns ought to be destroyed as incentives for growing up.

Mr. **VOLPE**. Senator, congratulations. My son until just a few years ago did not think I was ever 16 or 18. Now he realizes maybe I was 16 or 18 at one time.

Thank you very much.

Senator **DANFORTH**. Thank you very much, Mr. Secretary.

[The statement follows:]

STATEMENT OF GOV. JOHN A. VOLPE, CHAIRMAN, PRESIDENTIAL COMMISSION ON DRUNK DRIVING

Mr. Chairman, I appreciate the opportunity, as Chairman of the Commission on Drunk Driving, to comment on Title II of the Danforth bill. My comments will be brief and I shall submit additional remarks for the Record.

The Commission strongly supports raising the legal drinking age to 21. The Surgeon General has reported that life expectancy has increased over the past 75 years for every age group except one—those between 15 and 24. Their death rate is higher today than it was 20 years ago and the leading single cause of death for this age is drunk driving. (Health, United States, 1980. National Center for Health Statistics, Public Health Service, U.S. Dept. of Health and Human Services, Pub. No. (PHS) 81-1232, Dec. 1980).

To elaborate a little on statistics for younger drivers. Of all the young people 16 years of age and under who are involved in fatal accidents, 10 percent were found to have a Blood Alcohol Content of .10 or greater. Night time accidents on weekends for that age group show 37 percent exceed .10 which is considered legally intoxicated in many states.

Twenty-nine percent of those between 16 and 19 involved in a fatal accident are at or above the .10 BAC level on weekends that figure rises dramatically to 56 percent.

While these figures are for 1980 they still quite accurately reflect the current situation and statistically strengthen the call for a legal drinking age of 21.

It's quite significant, and certainly heartening, to find that a Gallup poll in December, 1982, reported that even among those 18 to 20 years of age 58 percent were in favor of a 21-year-old minimum drinking age. An impressive 77 percent of all Americans supported that age level.

An estimated 130,000 teenagers are injured each year in drunk driving accidents. In addition to the 14 teenagers who die every day in alcohol-related accidents, another 360 suffer injuries. Of 330 children born in the United States today, one will die and four will sustain serious or crippling injuries in an alcohol-related crash before they reach the age of 24.

Closely related to dram shop laws is the matter of the open container of liquor in motor vehicles. We recommend that States make such a practice illegal and would suggest it be incorporated in the Danforth Bill. Nineteen States presently have such statutes.

The Presidential Commission concluded it is counterproductive to DUI law compliance if persons driving or riding in motor vehicles have ready access to alcoholic beverages. Passengers should be included since they could take the driver's container when law enforcement officials are near. There are too many "Service Stations" conveniently located where both the car and driver can get "filled up" while waiting or after driving away.

While it is not my purpose to become involved in the question of the necessity of additional Federal appropriations for fighting drunk driving, the Presidential Commission does support improvement and modernization of traffic record keeping and implementation of a computerized National Driver Register. Testimony before the Commission proved conclusively that too many drivers who have been involved in alcohol-related accidents merely obtain licenses in other states to continue their death-threatening habit of driving after drinking. By computerizing and upgrading our state systems and then nationally, we can remove these people from our streets and highways. A survey in 1975 indicated 41 States wanted an immediate on-line response service to accomplish that objective. Whatever encouragement we can give the states to modernize their systems will help meet a major goal of the Presidential Commission—establishment of a state and national computerized traffic system and driver register.

In January seven people were killed and three others seriously injured at a toll booth on the Connecticut Turnpike when a tractor-trailer slammed into the toll booth creating an inferno of stopped vehicles. The driver of the truck, at the time of the accident, had a suspended license dated from February, 1982. He had never paid the reinstatement fee nor did he get his license returned. From 1965 until 1982 he had 15 citations for speeding and four moving violations other than speeding in North Carolina. His license had been suspended five times and revoked once.

To apprise your Committee of some of the highlights of the Interim Report of the Presidential Commission on Drunk Driving, let me cite these:

Self-funding mechanisms (abusers fees) at the State and Local levels.

Preliminary breath testing by police officers at the roadside.

Enactment of legislation which provides that a person with an alcohol concentration of .08 is presumed to be driving under the influence.

Enactment of legislation making it illegal per se for a person with an alcohol concentration of .10 or higher to drive or be in actual physical control of a motor vehicle.

Victim impact statements and victim assistance programs.

Elimination of plea-bargaining in DUI cases.

Prompt license suspension and imposition of a 30-day jail sentence for anyone who drives with a suspended or revoked license.

Education and rehabilitation services for convicted offenders based on their needs.

Time limitations, Mr. Chairman, prevent me from dwelling at length on other recommendations of the Commission but these will provide an example of the type of conclusions the Commission has reached after over a year of deliberation.

Senator **Danforth**. We are glad to have Senator Pell with us today, and Senator Pell is not only a cosponsor of S. 1108, but he is without doubt the longstanding leader in the Senate on matters of highway safety and drunk driving legislation in particular.

So, Senator Pell, we are delighted to have you.

STATEMENT OF HON. CLAIBORNE PELL, U.S. SENATOR FROM RHODE ISLAND

Senator **Pell**. Thank you, Mr. Chairman. And I thank my friend and colleague for his very, very nice words, indeed.

And may I add, it is also a great honor to be sitting with you as chairman of this subcommittee, who has done so much work in this field and lent so much will in it. But also, I served on the Commission Against Drunk Driving with Governor Volpe and I thought he did an absolutely superb job of chairmanship and running the committee and doing the research and also selling the results of the Commission's work afterward.

But I think that your hearing today on drunk- and drugged-driving comes, as was pointed out earlier by you, at a particularly appropriate time, because this month and next month are traditionally associated with high school and college commencements, a time of celebration and a rite of passage, but also a time of tragedy for many of our youngsters.

I guess there is nothing more devastating to a parent than a call from a police officer that a son or a daughter has been injured or killed in an automobile accident. And almost as devastating is the fear that the parents have as they await the possibility of that call as a child goes to a party where the parents have not been as wise as the Senator from New Jersey.

Every parent at one time or another lives in this fear and worries about it, and that their child will be one of nearly 9,000 teenagers lost each year to motor vehicle accidents.

The fact of the matter is that the greatest killer in the 15- to 24-year-old age group is drunk driving, and this is the only age group in which life expectancy has actually declined in the past 75 years. We are all conscious of how the general life expectancy has gone up, but for teenagers because of drunk driving it has actually gone down over this period.

The American people have expressed their outrage with this problem and determination that something should be done to prevent this senseless loss of life. Those whose lives have been personally touched by these tragedies, like MADD, the Mothers Against Drunk Drivers, and more recently the Students Against Drunk Drivers, have contributed tremendously by channeling the public outrage over the problem into concrete accomplishments that are beginning slowly to reduce the number of deaths.

The interesting thing today here is that fatalities have actually declined for the second straight year in a row, and enforcement campaigns are underway in almost every State. Two-thirds of our States have strengthened their drunk driver laws in the past 2 years, and several of these States will soon be receiving additional highway safety funds under the drunk-driving legislation that I cosponsored with you, Mr. Chairman, in the Senate, and with Congressmen Barnes and Howard in the House.

As you know, the Presidential Commission on Drunk Driving has recommended that all States adopt a 21-year-old driving age, pointing to studies demonstrating that raising the driving age produced an annual reduction of more than a quarter in nighttime fatal crashes involving 18- to 21-year-old drivers.

I believe it appropriate we should earmark additional funding out of the highway trust fund to encourage States to adopt a 21-year-old driving age. It is particularly important that we have a uniform minimum drinking age throughout the country. Without the kind of incentives contained in your bill, I fear we would continue to see a lack of uniformity, encouraging young drivers to cross State lines to purchase alcohol in neighboring States.

Your legislation has also very appropriately put driving under the influence of drugs into the same category of penalties and sanctions as driving under the influence of alcohol, and alcohol is a drug and they have the same effect. While the presence of drugs are a lot harder to detect in the bloodstream, it is no less a deadly cause of death and injury than alcohol when combined with driving an automobile.

Putting drugged driving in the same category as alcohol for the purpose of enforcement is essential to highway safety, and I strongly support this part of our legislation. A car with a driver impaired by alcohol or drugs is exactly as dangerous as a loaded gun in the hands of a man who is deranged. In both cases, you have the deadly combination of an instrument with the power to kill and a person who is past the powers of reason.

In my mind, the Federal Government should be doing all it can to help the States remove these ticking time bombs from our highways, and the further incentives contained in the legislation before us, Mr. Chairman, are a positive step in that direction, and I hope the full Senate and the House will quickly enact these measures, and in taking this action improve the safety of every American driving on our highways.

And I really congratulate you for the leadership you and the subcommittee have taken.

Senator **Danforth**. Senator Pell, thank you very much for your typically strong and eloquent statement. And we appreciate so much what you have done.

Senator Lautenberg.

Senator **Lautenberg**. Nothing by way of questions, Mr. Chairman, just a statement to my senior colleague for his continued interest in the betterment of good things in our society.

Senator Pell has long been a champion of concern for those who are disadvantaged and who try to avert tragedy whenever possible, and I know that his interest in this area was considerably enhanced by a tragedy to a member of your staff if I am correct, Senator Pell. And I am just pleased to have him with us today in this hearing.

Thank you very much.

Senator **Pell**. Actually, two members of my staff have been killed by drunk drivers.

Senator **Danforth**. Senator Trible.

Senator **Trible**. Senator, I too applaud your leadership in this matter and thank you for your statement today.

Senator **Pell**. Thank you very much indeed. And thank you, Mr. Chairman.

Senator **Danforth**. Secretary Swinburn.

STATEMENT OF CHARLES SWINBURN, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY GEORGE REAGLE, ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Mr. **Swinburn**. Thank you, Mr. Chairman, members of the committee.

I have submitted a prepared statement for the record and I will read a brief summary version with your permission, Mr. Chairman.

I appreciate the opportunity to appear before this committee to discuss title II of S. 1108, the Highway Safety Act of 1983. Secretary Dole has asked me to express her regrets that she cannot be here personally to testify on this matter, to which she attaches the highest importance. Unfortunately, previously made commitments kept her away from Washington today.

With me is Mr. George Reagle, the National Highway Traffic Safety Administration's Associate Administrator for traffic safety programs.

As you know, Mr. Chairman, transportation safety in all of the transportation modes is a high priority of Secretary Dole's and is a matter in which she has the greatest personal interest. I would like to express for the Secretary, Mr. Chairman, her appreciation for the initiative which you have taken in developing this important legislation. I can assure you on her behalf that we will continue to work cooperatively with you and your staff in addressing this broad and comprehensive bill.

In that regard, I would like to express our appreciation to the committee staff for their willingness over the last few weeks to meet and discuss many issues related to the bill.

Moving on to the substance of the bill, Mr. Chairman, I would first like to say that we support the provision in title II which would make the creation of treatment programs for those convicted of driving under the influence of certain drugs one of the supplemental criteria which States may meet in order to receive section 408 supplemental grant funds. We would like to work with the committee staff to develop an acceptable definition of drugs which impair driving ability.

As to the three categorical grant programs which address the minimal legal drinking age, child passenger safety seats, and computerization of traffic record systems by the States, let me say first that the problems which these provisions are designed to address are very real.

First, drunk driving by young people is clearly one of our biggest highway safety problems, and research has shown that increasing the legal drinking age produces a significant decrease in deaths due to drunk driving among young people. Statistics which you cited in introducing your bill clearly demonstrate that fact.

Second, upgrading by the States of their traffic records systems will be essential to insuring the effective and early operation of the projected online national driver register system.

Further, there can be few objectives more worthwhile than achieving child safety seat legislation in all of the States. This is an area where considerable progress has been made in just the last few years. We are very encouraged by the fact that 36 States and the District of Columbia have already enacted mandatory child restraint laws, and three more bills have passed State legislatures and are awaiting their Governors' signatures.

I must note, Mr. Chairman, that although we completely share your views as to the seriousness of these problems and the desirability of the States addressing them, the question of whether the administration can support new Federal level categorical grant programs, as proposed in title I and title II, is still under internal discussion. We will convey the administration's position to you as soon as it is determined.

I would point out one concern we have, that linking the minimum drinking age issue with the other prohibitions provisions in section 205 may be counterproductive. Frankly, the controversial nature of these provisions could overshadow the importance of the minimum drinking age provision and thus frustrate the positive purpose of the initiative.

In a basic grant program of this type, we believe it important to make the link to highway safety as clear as possible without unnecessary complications.

To wrap it up, Mr. Chairman, the efforts you have gone in preparing this legislation obviously reflect a real commitment on your part to finding ways to address critical highway safety issues. I can assure you that Secretary Dole shares your concern and commitment. The issues raised by these provisions are important to all of us and we look forward to continued discussions with you and the committee staff.

We would ask that the committee briefly to postpone final decisions on the categorical grant provisions until we have had a further opportunity to provide comments to you.

That completes my prepared statement, Mr. Chairman. Mr. Reagle and I would be pleased to answer your questions.

Senator **Danforth**. Thank you very much, Mr. Secretary. We will have 2 more days of hearings in June on this bill. We do not yet have a day for markup. I would hope, perhaps some time in the middle of the summer, we could mark the bill up.

I have always recognized the fact that when a bill is introduced—and I happen to take a very strong view on various different matters on highway safety, but I recognize that in getting legislation passed it is necessary not only to get the committee to mark up the bill and report it out, but to get both Houses of the Congress to pass it and to get the President to sign it into law; and that there is a long road to travel in that period of time.

My hope would be that we could communicate very closely with the administration during this period of time and try to go as far as we can with the support of the President and of the administration. Undoubtedly, there will be disagreements between sponsors of the bill on the one hand and the administration on the other hand with respect to various particulars.

And in a bill as complex, with as many sections as this one has, I think that that is to be expected. But I would hope that we could enter into this period of time in an effort to try to reach as much agreement as we can that we could agree to negotiate and to try to find points of agreement, recognizing that there will not be a 100 percent agreement, of course.

But I am absolutely confident that Secretary Dole is a strong supporter of highway safety. She has stated that to me privately and repeatedly in various circumstances, and she has reiterated that strong feeling, not only in answer to questions, but as I recall in the first page of her statement during her confirmation hearings.

So I appreciate the tone of your comment. I am not sure that I necessarily agree with the specific comments you made about the bill, but I think that those are matters that we could agree that for the time being I would prefer to accentuate the positive and accentuate the need for cooperation and negotiation between the administration and the committee.

So I very much appreciate your comments.

Mr. **Swinburn**. Thank you, Mr. Chairman.

Senator **Danforth**. Senator Lautenberg.

Senator **Lautenberg**. Thank you, Mr. Chairman.

Mr. Secretary, I too am encouraged by the tone of your statement. I am concerned about one thing, however. I invite you to be more positive. I know that we talk about the funding of all kinds of things and there is a lot of competition for too little resource.

But when yesterday we voted to afford the development of the MX missile, which ultimately could snuff out multiple millions of young lives, it would be a travesty, I think, if we could not find the resources available to save a few hundred thousand a year from death or injury.

Thank you, Mr. Chairman.

Senator **Danforth**. Thank you.

Senator Trible.

Senator **Trible**. Mr. Secretary, of course the purpose of the MX missile, although I did not realize it was the subject of these proceedings, is to protect human life, and it is a deterrent to——

Senator **Lautenberg**. If we kill enough, we can save enough.

Senator **Trible**. That is an interesting tangent, but it is not central to our discussions here today.

Let me say, more directly to the purpose at hand, that I too welcome your testimony. I discussed these matters in a general framework with the Secretary and I too am confident that she is sincere in her desire to make progress in this area. And we look forward to working with you in the days ahead.

Mr. **Swinburn**. Thank you, Senator.

Senator **Danforth**. Thank you.

Senator **Lautenberg**. Mr. Chairman, I reserve the right to respond.

I thought that, as a U.S. Senator sitting here, that whatever I chose to make relevant was my prerogative, Senator Trible. And I defend what I said, that I think that if we can find a way to create weapons of destruction, even though a few think that our ultimate security is protected, that we can also find a way to save lives. And I am sure you would not disagree with that.

Senator **Danforth**. Well, this is all very interesting. Thank you very much, Mr. Secretary.

[The statement follows:]

STATEMENT OF CHARLES SWINBURN, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Committee: I appreciate the opportunity to appear before this Committee to discuss Title II of S. 1108, the "Highway Safety Act of 1983". Secretary Dole has asked me to express her regrets that she cannot be here personally to testify on this matter, to which she attaches the highest importance. Unfortunately, previously made commitments kept her away from Washington today. With me today is Mr. George Reagle, the National Highway Traffic Safety Administration's Associate Administrator for Traffic Safety Programs.

As you know, Mr. Chairman, transportation safety in all of the transportation modes is a high priority of Secretary Dole's and is a matter in which she has the greatest personal interest. Transportation safety, and highway safety in particular, are subjects on which she has spent a great deal of time since assuming her responsibilities as Secretary of Transportation.

I would like to express for the Secretary, Mr. Chairman, her appreciation for the initiative which you have taken in developing this important legislation. I can assure you, on behalf of Secretary Dole, that we will continue to work cooperatively with you and your staff in addressing this broad and comprehensive bill. In that regard, I would like to express our appreciation to the Committee staff for their willingness to meet and discuss issues related to the bill.

My testimony today will concentrate on the provisions of Title II and a related grant program in Title I which deals with child passenger safety seats. The problems which these provisions are designed to address are very real and are ones to which the National Highway Traffic Safety Administration has been devoting a great deal of attention.

Before turning to the specifics, I should note, Mr. Chairman, that although the Department totally shares your view as to the seriousnes of these problems and the desirability of the States addressing them, the question of whether the Administration can support new Federal level categorical grant programs, as proposed in Title II and Title I, is still under internal discussion. We will convey the Administration's position to you as soon as it is determined.

DRUGGED DRIVING SEC. 204

Moving on to the substance of the bill, Mr. Chairman, I would like to comment briefly on the provision in Title II which adds a new criterion to the list of supplemental criteria in the Section 408 alcohol safety grant program. This would make the creation of treatment programs for those convicted of driving under the influence of certain drugs one of the supplemental criteria States may meet in order to receive supplemental grant funds.

Clearly, anyone driving under the influence of certain drugs poses a serious threat to highway safety. Although the extent to which marijuana and other "psychoactive" drugs contribute to highway safety problems is currently unknown, we strongly believe the State should be encouraged to: first, determine the scope of their highway safety problems due to inappropriate use of drugs by drivers; second, examine their existing laws and, if appropriate revise them to deal effectively with drugs and driving; and, third establish treatment programs for those convicted of driving under the influence of drugs.

We support adding drug treatment programs to the list of supplemental criteria, and would like to work with Committee staff to develop an acceptable definition of "drugs which impair driving ability".

MINIMUM LEGAL DRINKING AGE, SEC. 205

Section 205 of the bill provides two years of incentive grants for each State that enacts or has enacted laws which: (1) establish a minimum legal drinking age of 21; (2) prohibit persons licensed by the State from selling, vending, giving away, or supplying alcoholic beverages to a person under 21, or to any person who is or appears to be intoxicated (i.e., a "dram shop" law); and (3) provide a general prohibition against any person procuring, selling, giving away or supplying any alcoholic beverage in any quantity to any person who is under 21 or who is or appears to be intoxicated. Contract authority is provided in the amount of $10 million for fiscal year 1984 and $20 million for fiscal year 1985, out of the Highway Trust Fund.

As you recognized in introducing your bill, Mr. Chairman, drunk driving by young people is one of our biggest highway safety problems. Of the 25,000 Americans who are killed each year in alcohol-involved traffic accidents, approximately 5,700 or 23 percent are under the age of 21. Teenagers are two and one-half times as likely to be in a crash in which alcohol is involved on their part as the average driver.

Research has shown that increasing the legal drinking age produces a significant decrease in deaths due to drunk driving among young people. A study using the fatal accident data collected by NHTSA showed that, in eight States, raising the legal drinking age produced an average annual reduction of 28 percent in nighttime fatal crashes involving 18-to-21-year-old drivers.

The Department has already recognized the importance of funding efforts to encourage States to raise their minimum legal drinking age to 21 under the Supplemental Grant portion of the § 408 Alcohol Traffic Safety Incentive Grant Program established by Congress last year. Under that program, one of the ways that a State can qualify for a supplemental grant is to raise its minimum drinking age to 21. To date, 17 States have minimum drinking age laws of 21.

As I indicated, we will have to report back to you on whether we can support a new categorical grant program in this area. I should note, however, that we are concerned about linking the minimum drinking age issue together with the "dram shop" and the general prohibition provisions. These provisions are very controversial. We do not know enough yet about the general effectiveness of "dram shop" laws and we have some problems with the general prohibition. Frankly, the controversial nature of these provisions could overshadow the importance of the minimum drinking age provision and thus frustrate the positive purpose of the initiative. In a basic grant program of this type, we believe it is important to make the link to highway safety as clear as possible without any unnecessary complications.

COMPUTERIZATION OF TRAFFIC RECORD SYSTEMS, SEC. 206

Section 206 of the bill provides three years of incentive grants for each State that upgrades and improves its computerized traffic records systems. This program would be funded at $20, $25, and $30 million by appropriations out of the Highway Trust Fund, for fiscal years 1984, 1985, and 1986, respectively.

The intent of this provision is to provide Federal support for the States' efforts to upgrade their automated traffic records systems, which will be needed to ensure the effective and early operation of the projected on-line National Driver Register system. We believe that this upgrading by the States is an important initiative, although again, we cannot say at this point whether we can support a new categorical grant at the Federal level to accomplish these objectives.

CHILD PASSENGER SAFETY SEATS, SEC. 107

The child passenger safety seat provisions provide a one-year incentive grant for each State that enacts or has enacted child safety seat legislation. Contract authority of $10 million for fiscal year 1984 and $20 million for fiscal year 1985 is provided, out of the Highway Trust Fund.

Child safety seat legislation is an area where considerable progress has been made in just the last few years. We are very encouraged by the fact that 36 States and the District of Columbia have already enacted mandatory child restraint laws, and three more bills have passed State legislatures and are awaiting the Governor's signatures.

In addition to reviewing the need for a separate grant program and the level and source of funds, we are reviewing the need for specific criteria to ensure effective implementation by the States. There are several other matters that we wish to analyze and we will provide you with the results of our analysis when it is completed.

SUMMARY

To wrap it up, Mr. Chairman, the efforts you have gone to in preparing this legislation obviously reflects a real commitment on your part to finding ways to address critical highway safety issues. I can assure you that Secretary Dole also shares your concern and commitment. The issues raised by these provisions are important to all of us and we look forward to continued discussions with you and the Committee staff. We would ask that the Committee briefly postpone final decisions on these provisions until we have had a further opportunity to provide formal comments to you.

This completes my prepared statement. Mr. Reagle and I would be pleased to respond to your questions.

Senator **Danforth**. Lieutenant Governor Castle.

STATEMENT OF HON. MICHAEL CASTLE, LT. GOVERNOR OF DELAWARE; ACCOMPANIED BY FRANCIS A. IANNI, DIRECTOR, OFFICE OF HIGHWAY SAFETY

Mr. **Castle**. Thank you very much, Mr. Chairman, for the opportunity to provide comments on Delaware's efforts to reduce death and injuries on our highways which are a result of drinking and driving.

As I go through the shortened version of my previous written statement,[1] I would like to point out that I am going to be discussing two basic areas. One is the law we have adopted in the State of Delaware and the other is the public awareness programs that we are following in the State of Delaware.

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[1] The attachments referred to in the written statement are in the committee files.

And I think it is very important to have both of these components, because without them I do not think you can get the necessary complementary effect to really accomplish the purpose of attempting to have what we are doing to act as a deterrent to people getting on our roads and driving drunk.

In 1978 we initiated a 3½ year experiment with a new law that put emphasis on a referral program for first offenders. A fortunate feature of the 1978 law was the requirement for a report to be rendered to the legislature in 1982 outlining any recommended changes.

An interagency committee met for 2 years on a fairly regular basis to evaluate progress and, under constant prodding and education by the Governor's representative for highway safety, the increased public awareness generated by a newly formed MADD chapter in Delaware, establishment by Governor du Pont of a drunk-driving task force to which he appointed me as chairman, and bipartisan leadership in the General Assembly, we were successful in passing a new DUI package in June 1982, which became effective on October 19 of last year.

We feel we can easily lay claim to having probably the most comprehensive DUI law and DUI program in the country. Our law is not perfect, our DUI program is being improved, but we are very pleased with the law and our total program, which I will outline for you.

Delaware has a dual track system in that a DUI charge is processed both through criminal and administrative channels. These two proceedings are conducted separately and findings in one are not influenced by findings in the other. Emphasis was placed on swift and certain justice. Seventy-six percent of our arrests have resulted in a minimum 90-day administrative revocation within 15 days of arrest, without the availability of any conditional license.

On the court side, we have been running with a 92-percent conviction rate, with only a 1-percent nonguilty finding and only 7-percent nol prossed, reduced or dismissed, with most of these latter categories due to a very severe shortage of prosecutors in one county. Keep in mind that even those cases that were nol prossed, pled to a lower charge or otherwise dropped, have to proceed through the administrative hearing procedure.

Other major features of our law are as follows: We have a per se blood alcohol concentration level of 0.10, but a DUI arrest can be made at a level above 0.05 if there is other supporting evidence.

We have an implied consent law, plus taking the test is a mandatory requirement. The arresting officer specifies which test will be taken and can take a blood, breath, and urine test as required. And the use of preliminary breath test equipment is permitted.

The license is taken away at the time of arrest and the driver served with a notice of intent to revoke, which will take place automatically within 15 days if a hearing is not requested. The minimum mandatory administrative revocation period without the availability of a conditional work permit is 90 days for a first offense. Penalties are even stiffer for refusing the test.

Under criminal proceedings, we have mandatory fines ranging from $200 to $2,000 and jail sentences ranging from 2 to 18 months, with a mandatory 60-day sentence for multiple offenders.

We have an excellent statewide alcohol education and rehabilitation program. Screening of all offenders is mandatory, and regardless of the designated period of revocation, no one can have their license reinstated unless they complete the assigned program, pay all court fees, have a character check, and pay a $125 reinstatement fee and a $15 license fee.

We also have some tough penalties for those drivers found guilty of a DUI offense who drive while revoked.

Finally, other features are: That a refusal is admissible evidence; drugs or a combination of drugs and alcohol are also included in the law; a minor convicted of DUI loses his license until he is 20; violations of all generally conforming ordinances of other States count for determining number of offenses; a DUI offense is kept for 5 years on a driver's record; and we have an excellent centralized statewide record system. In this regard, we would like to see Delaware become one of the test States for the national drivers register. We feel that we are uniquely qualified to test this program.

Intoxilyzers are in all major police facilities. The maximum time to travel to one is about 20 minutes. All newspapers report whether alcohol was involved in an accident and whether or not the victims wore a seatbelt.

We have a central program coordinator. Our school based programs are improving rapidly, SADD chapters have been formed, and a massive prom and graduation program was launched recently.

We have had excellent results with the statewide DUI reporting system, with 25 percent of the reports resulting in arrests. We have a fully implemented victim compensation and assistance program, and the courts have recently started permitting victims to testify at presentence hearings.

As you can see, we are not being immodest in claiming that our program is probably the most all-encompassing program in the country. Although we have increased arrests for 1981 and 1982 by 76 percent, we really had not established a very effective deterrent.

All of this changed very dramatically in the fall of 1982. On December 4, 1982, we conducted our first sobriety checkpoint. With that, a revolution took place in Delaware with regard to the public attitude toward drinking and driving. A massive holiday public information and education program was launched.

It would not be wrong to say that Delaware became the most drunk-driving aware State in the country. Everywhere the topic of conversation for everyone was the new DUI law and sobriety checkpoints, and this is an example of one of the signs which was put up along some of the highways along the State.

What have been the results of all of this? In comparing the period of October 19, 1982, to May 16, 1983, to the previous like period, fatalities are down 37 percent and alcohol-involved fatalities are down 48 percent. Injury accidents are down 15 percent and alcohol-involved injury accidents are down 37 percent. This sharp downward trend has occurred while our gas consumption has risen.

How has the public accepted all of this? Delaware State College recently conducted a statewide survey. The survey, taken in February and March, shows strong public support for the law. An example of this is a local Delaware Today magazine which shows an article on the cover on the effects of our drunk-driving law.

One major legislative initiative will take place in the next few days. We have a drinking age of 20. Our three neighboring States have raised theirs to 21 and the New Jersey Legislature, as Senator Lautenberg has pointed out, has sent us a resolution asking us to raise our age limit, which we of course had already planned to do with a bill introduced last year.

The public opinion poll which I mentioned earlier showed that 60 percent of the people polled supported raising the drinking age, and a recent radio call-in poll showed that the public favored raising the age limit in the ratio of 25 to 1.

If we are successful in raising the drinking age to 21, we will then meet not only the criteria for the basic alcohol grant, but 18 of the 21 supplemental criteria. We do not deceive ourselves into believing that we have licked the problem. We feel that we have most of the essential elements for a successful program, but we know that it will require a sustained effort, a continuing commitment of resources, careful cultivation of public support, and continued support at the Federal level and from Congress.

We have been very grateful for the very close working relationship and support that we have received from all levels of NHTSA and the interest Congress and your committee have shown in highway safety.

Thank you very much, Mr. Chairman.

Senator DANFORTH. Mr. Castle, thank you very much. That is very impressive testimony.

Has Delaware focused on drugged driving as well as drunk driving?

Mr. CASTLE. We have, Mr. Chairman. Our law includes driving while under the influence of alcohol and/or drugs, and as you well know probably as well or better than I or anyone in the room, it is probably harder to detect drugs, simply because of the different testing methods that are so effective for alcohol, that have been made so precise.

Nonetheless, we have had cases in Delaware on drugs alone, on drugs and alcohol, and of course on alcohol alone.

Senator DANFORTH. Do you have any advice for the rest of the country on how to handle the drugged-driving question?

Mr. CASTLE. The drugged driving?

Senator DANFORTH. Yes.

Mr. CASTLE. Let me see if General Ianni can answer that better than I, since he is our Highway Safety Coordinator.

Mr. IANNI. One feature that has helped us, Senator, is the fact that the officer can select the test and conduct all tests, so that if he does conduct a breath test and there are clear indications that something else is wrong he just moves on to a blood and a urine test so that he can pick up the drugs.

We have a very excellent medical examiner system in the State, very quick response, and the individual in charge is very committed to the problem of alcohol, so that there is very close cooperation between him, the hospital, and the police.

Senator DANFORTH. Was that a statutory change, to permit the officers to conduct those tests?

Mr. IANNI. Yes, it was.

Mr. CASTLE. If I might add, our medical examiner believes you should not have anything, any kind of alcohol, and drive, and he strongly feels that way. So you have a real staunch advocate in his corner, and he has made it very clear in his presentations that it is being under the influence of alcohol, and we talk about drunk driving and maybe that is the wrong expression, because he points out essentially that at 0.05 and even at 0.10 you might be influenced in terms of your thinking and physical reactions and things, but not anywhere near the stage of being drunk in terms of falling down or slurring your words, whatever it may be.

It is an important difference and something we should always remember.

Senator DANFORTH. Now, on the checkpoints, what you do is just put up checkpoints along the roads and highways and stop people. What happens to them?

Mr. CASTLE. Well, it is a fairly simple procedure and it has been very effective. And it is very interesting. Our State police are doing it, and as you know we have a small State, and they go to various sites, usually between the hours of 11 and 1 o'clock or 12 and 2 o'clock in the morning—our bars close at 1—and they stop people and they basically ask them for their name and their address.

And if they appear to be OK, that is all they do, they do not go any further. If they seem to be having a little bit of difficulty in terms of responding to that, then they go on and ask for their license. And if indeed they detect the odor of alcohol or other actions which would indicate that perhaps there is some possible cause, that they were driving while under the influence of alcohol, they then ask them to take a field test. And if that does not work, then they usually ask them to take the breath test.

And I have talked to I suppose 30 people who have gone through this procedure and every one of them has said that the police officers have been unfailingly polite. But those 30 people, 2 of them were actually arrested for driving while under the influence of alcohol.

And it has been a very interesting procedure. But I can tell you, as any good politician does, over Christmas I went to about a dozen affairs one weekend, just political things and parties and whatever it may be, and it was the subject of conversation at every single event I went to. And people have changed their habits in the State of Delaware.

A lot of people in the back of this room and a lot of other people will be going to Rehoboth Beach, Del., and there again I would warn you to be very careful if you leave the Rusty Rudder or any of the bars down in that area, because they are going to be looking for people down there, too.

Senator DANFORTH. Has this been challenged in court, the checkpoints?

Mr. CASTLE. The checkpoints were challenged in court earlier, about 3 years ago. We had checkpoints for registration purposes and matters like that, and the U.S. Supreme Court, including a reference to the Delaware case that was before it and another case they heard at the same time, upset our law because we were doing it on a random basis and they said it has to be more systematic.

But they indicated that if it was more systematic they probably would not again find it unconstitutional. And we expect by some defense lawyer at some point to be challenged on the way up, but we believe that we are doing it in such a systematic way, either every car or every third car or some precise system, that we can sustain any constitutional challenge to it.

Senator **Danforth**. Senator Lautenberg.

Senator **Lautenberg**. No questions, just my compliments to Lieutenant Governor Castle for an excellent statement and a fairly thorough program. I think that it begins to attack this problem properly and I am pleased to see that you as a neighboring State of ours will be legislating, I hope, a higher drinking age level, and I think that is important as we get this as kind of a uniform policy throughout our country.

Thank you very much.

Senator **Danforth**. You have been very helpful, Governor. Thank you. I think that you have helped make the case, really made it very persuasively, that if a State legislature takes this problem seriously and if it enacts tough laws and if there is an effort to publicize the existence of the tough laws, the effect of doing so is to save lives and to save very, very many lives. So I appreciate your testimony.

Mr. **Castle**. We appreciate the opportunity to be here and to be of any help to the Senate. Thank you very much.

Senator **Danforth**. Thank you, Governor.

Now Mr. Charles Hurley.

STATEMENT OF CHARLES HURLEY, EXECUTIVE DIRECTOR FOR FEDERAL AFFAIRS, NATIONAL SAFETY COUNCIL, ACCOMPANIED BY HARRY N. ROSENFIELD, GENERAL COUNSEL; AND; NANCY BERK, LEGISLATIVE ASSISTANT

Mr. **Hurley**. Senator, I am Charles Hurley, Executive Director for Federal Affairs of the National Safety Council. With me is Harry Rosenfield, our General Counsel, and Nancy Berk, Legislative Assistant for Federal Affairs.

Although traffic deaths have declined in each of the past 3 years, a 4-percent increase in the first 2 months of the current year should alert us to the continuing necessity for enacting measures to improve highway safety. It should be pointed out that the positive leadership in highway safety recently has come from the Congress in the steps it has taken to reduce the senseless slaughter of motor vehicle crashes.

We should also add that we too are indeed pleased that the new Secretary of Transportation, Elizabeth Dole, is already demonstrating her personal commitment on these issues.

The Council's policy on occupant protection is stated unequivocally: We support and actively work for increased usage of all types—active, passive, voluntary, mandatory, adult, and child.

The issue of child passenger protection is of particular importance and we actively support the current efforts in the States to broaden the required use of child restraints. Motor vehicle crashes are the leading cause of death to children under 5 years of age, in fact for all people under age 37.

Young children are at much greater risk than the general population due to their size and skeletal development. Additionally, although an adult can choose to travel protected or unprotected, children do not have that choice, but are dependent upon others to make those decisions for them.

To date, 39 States and the District of Columbia have enacted legislation on this issue. In two of these States, the bills are awaiting the Governor's signature. I believe in Nevada, the bill will be signed tomorrow.

We have brought as an exhibit our map identifying the States with child passenger restraint laws on the books, beginning with Tennessee in 1977. I might add that it was due, really, to the personal efforts of one pediatrician, Dr. Bob Sanders, and his wife. And in 1977 they did get enacted the first State law on this subject.

Rhode Island followed in 1980, and over the past 3 years the number of States has grown rapidly, as we have indicated by the color-coded map. Seven States were successful in 1981, 10 States and the District of Columbia in 1982, and in the first 5 months of 1983, 20 more States have passed laws.

We also have attached to our statement the most recent copy of our policy update describing the major provisions of each of the State laws and pending legislation. There is a copy of a black and white map enclosed with it. It is my understanding in Missouri, the bill has passed the House and has passed the Senate committee with an amendment which may be a problem as the legislature adjourns June 15.

Much of the credit for this progress should rightfully be given to the American Academy of Pediatrics and the National Child Passenger Safety Association. It has been through their diligent advocacy that we are able to say that child restraint usage has increased from the 6 to 8 percent in 1978 to the 30 to 40 percent usage today.

These efforts are beginning to pay off handsomely. In the 12 months since Michigan's law has been in effect, there has been a 31 percent reduction in morbidity. In Tennessee, before enactment the death toll due to motor vehicle crashes of children under age 4 had been running at approximately 25 a year. That figure last year was 6.

The National Safety Council therefore strongly endorses legislation to provide grants as incentives to States to enact and implement comprehensive child passenger safety laws and programs.

I might also add, as a volunteer I am the vice president for legislation of the National Child Passenger Safety Association, and that organization too strongly endorses legislation for incentive grants.

Of course, it could be rhetorically asked why there is a need for Federal funding when so many States are passing laws, and the answer is quite clear: Enactment of good legislation is just the first step. Implementation of comprehensive programs must be done to support these laws if we are to succeed in saving children from such tragic deaths and injuries.

Funding for enforcement is critical, as is funding for loaner programs, hospital and community-based training programs in correct usage, public information and education programs, and effective evaluation, to name only a few.

For these reasons, the National Safety Council recommends that the committee consider expanding the present provision of S. 1108 which limits the funding to enforcement assistance only and to consider some of the other, just as important components of comprehensive programs.

My statement goes on to express our strong support for age 21 and the emphasis of the need to go back to the task force approach where Delaware and many other States have achieved such progress. We are supplying to the committee an information package which we have developed for citizen action groups on 21, as well as an information package on the drunk and drugged driver concept.

We support inclusion of drug provisions, probably as part of the 1982 legislation the committee passed last year. We strongly support the National Driver Register and urge the committee to undertake comprehensive hearings on the implementation of that act, since very few States, only a handful, are expected to qualify and those may not represent the most effective programs, with the exception of my native State of Delaware.

We also urge the committee to undertake comprehensive hearings on the implementation of Governor Volpe's Commission report.

Thank you, Mr. Chairman. We would be glad to respond to any questions.

Senator **Danforth**. Thank you very much, Mr. Hurley.

Could you describe for me the effect on a young child who is involved in an accident, in a child's restraint mechanism, and by contrast a child who is not in such equipment?

Mr. **Hurley**. For a child that is not protected in a safety device, a good bit of the weight is in the head and often the head injuries are therefore more prominent, and as the child is flung toward the dash or around the car, serious injuries, particularly head injuries, result. Epilepsy is a common occurrence. Also, when a child rides on a mother's lap, tragically there have been a number of instances where the baby is crushed by the parent going toward the dash behind the child.

In a seat, that force is distributed through a harness shield such that the child rides the incredible energy of that crash down. In a 20-mile-an-hour crash situation, a 30-pound child weighs 600 pounds. There is no possible way the child can be held in a parent's arms or in fact, as many people often did, stick their hand out.

The seat is essential to protect the child. Also, the safety belt. Often, under age four the kids do not have the skeletal structure in the pelvis and hips to withstand the crash forces and therefore the child seats are absolutely necessary.

Senator **Danforth**. Now, a child restraint law provides what?

Mr. **Hurley**. Well, it varies from State to State. Generally, the ideal law would probably be for kids 4 and under to be required to be in a child restraint device. If one is not available, a belt is always preferable to no device at all. And preferably in the rear seat, that offers even better protection.

Usually there is a civil fine of from $10 to $25, sometimes $50, which is usually waived when the person can bring back proof of acquisition of a seat. Again, the goal is not to collect fine revenue but to get children in the seats.

Senator **DANFORTH**. And this equipment does not come with the car; it is bought by the car owner, correct?

Mr. **HURLEY**. That is correct.

Senator **DANFORTH**. And what is the price?

Mr. **HURLEY**. The prices range from as low as probably $30 to $40 up to probably $100. There also are a number of loaner programs which our local safety councils and a range of other citizen groups around the country have been active in promoting, and there the rental can be as little as $5 or so for a device.

The American Academy of Pediatrics, as you know, has a terrific program called first ride, safe ride, often with a hospital-based loaner program.

Senator **DANFORTH**. Now, occasionally when I am driving around I look at the next car stopped at the stop light and see presumably a parent behind the steering wheel, holding the child also behind the steering wheel or right up against the window. Is that a dangerous practice?

Mr. **HURLEY**. Of course. It contributes to potentially fatal and it is the principal cause of death to kids. In fact, if you add up all of the immunity to diseases that we spend so much time and energy on, they do not come close to motor vehicle crashes in terms of death to kids.

I might point out that there is a legitimate movement in the country in this regard. Child passenger safety laws are one example. Lest you think all funds are Federal in this area, the McDonald's Corp. in cooperation with the safety council expects to sign up six million kids, this weekend alone in a program that complements State child restraint laws. Kids visit McDonalds and pledge to properly restrain themselves when riding in cars and after a certain number of visits, they receive a free ice cream cone.

Senator **DANFORTH**. Thank you very much, sir.

Mr. **HURLEY**. Thank you.

[The statment follows:]

STATEMENT OF CHARLES A. HURLEY, EXECUTIVE DIRECTOR FOR FEDERAL AFFAIRS, NATIONAL SAFETY COUNCIL

Mr. Chairman, we are pleased to be here today in response to the committee's invitation to present the National Safety Council's views on selected provisions of the proposed Highway Safety Act of 1983.

I am Charles Hurley, Executive Director Federal affairs, National Safety Council. With me is Harry Rosenfield, General Counsel of the National Safety Council and Nancy Berk, Legislative Assistant for Federal Affairs.

As a matter of identification the National Safety Council is a not-for-profit, public service organization chartered by Congress. Its mission is to provide methods and procedures to prevent accidents and mitigate injuries.

Although traffic deaths have declined in each of the past three years, a 4 percent increase in the first two months of the current year should alert us to the continuing necessity for enacting measures to improve highway safety. It should be pointed out that the positive leadership in highway safety recently, has come from the Congress in the steps it has taken to reduce the senseless slaughter from motor vehicle crashes. We should also add that we are indeed pleased that the new Secretary of

Transportation, Elizabeth Dole, is already demonstrating her personal commitment on these issues.

The Council's policy on occupant protection is stated unequivocably: we support and actively work for increased occupant restraint usage—active, passive, voluntary, mandatory, adult and child. The issue of child passenger protection is of particular importance and we actively support current efforts in the states to broaden the required use of child restraints. Motor vehicle crashes are the leading cause of deatlh for children less than 5 years old, in fact for all people under age 37. Young children are at a much greater risk than the general population due to their size and skeletal development. Additionally, although an adult can choose to travel protected or unprotected, children do not have that choice but are dependent upon others to make those decisions for them.

To date, 39 states and the District of Columbia have enacted legislation on this issue. In two of these states, the bills are awaiting the governors' signature. Five other states without laws have bills pending in their legislatures. We have brought as an exhibit our map identifying the states with child passenger restraint laws on the books. Since Tennessee's law in 1977 (orange) and Rhode Island's in 1980 (green), over the past three years the number of states has grown rapidly, and we have attempted to document that momentum with this color-coded map. Seven states (yellow) were successful in 1981, 10 states and the District of Columbia (blue) did likewise in 1982 and in the first five months of 1983, 20 more states (red) passed laws. We have also attached as an appendix, the most recent copy of our "Policy Update," describing the major provisions of each of the state laws and pending legislation. There is a copy of the map attached to the "Update."

Much of the credit for this progress should be rightfully given to the American Academy of Pediatrics and the National Child Passenger Safety Association. It has been through their diligent advocacy that we are able to say that child restraint usage has increased from the 6–8 percent in 1978 to the 30–40 percent usage today. These efforts are beginning to pay off handsomely. In the 12 months since Michigan's law has been in effect, there has been a 31 percent reduction in morbidity. In Tennessee, before enactment, the death toll to motor vehicle crashes of children under the age of 4 years had been running at approximately 25 per year. Last year, there were 6 deaths, clearly a statistically appreciable decline. The National Safety Council therefore strongly endorses legislation to provide grants as incentives to states that enact and implement child passenger restraint laws and comprehensive programs.

It could be rhetorically asked why there is a need for federal funding when so many states are enacting laws. The answer is clear: enactment of good legislation is just the first step. Implementation of comprehensive programs must be done to support these laws if we are to succed in saving children from such tragic deaths and injuries. Funding for enforcement is critical, as is funding for loaner programs, hospital and community-basded training programs in correct usage of child restraints, public information and education, and effective evaluation, to name only a few.

For these reasons, the National Safety Council recommends that the Committee consider expanding the present provisions of S.1108 which limits the funding to enforcement assistance only, and to consider some of the other, just as important, components of a comprehensive program. This approach allow states to develop the entire program rather than concentrating on just one aspect, to the possible detriment of the issue as a whole. It is our belief that the funding should be available over a 3 year period rather than over 2 years. This would enable states to better develop and manage sound programs.

In turning to a discussion of drinking and driving, the Council has joined the National Transportation Safety Board, the Presidential Commission on Drunk Driving, the Department of Transportation and other organizations to push for a minimum drinking age of 21 in all states. People between the ages of 15 and 24 are the only group of Americans whose life expectancy has decreased during the past 15 years. The major cause of death for this group is motor vehicle fatalities, with many of those deaths attributed to drinking and driving. We therefore strongly endorse the incentive approach provided in the proposed legislation to encourage the 33 states and the District of Columbia that do not have 21 as the legal minimum drinking age, to joint the 17 states that already do have 21.

Experience indicates that in efforts to raise the drinking age, such proposals should be part of a comprehensive package to reduce drunk driving in order to get favorable treatment by state legislatures. When the issue is presented in isolation, it is likely to become the target of opposition for many quarters. One of the best mechanisms for garnering this type of sustained and well-rounded support is through the citizen-based task force approach in concert with such key groups as M.A.D.D., R.I.D. and others. Again, we must stress that while the issue is national in scope, its solution lies primarily at the state and local levels. It is there that organized efforts must be made.

The Council has prepared an information package (included in the appendix) to aid citizens of those 33 states in encouraging their state legislatures to increase the drinking age. We are pleased to report that the cover is already outdated. In the few weeks that the material left the printers, Oklahoma became the 17th state to raise the drinking age to 21.

On the drug issue, we recognize that driving while under the influence of drugs other than alcohol is a serious problem. The use of such drugs is usually combined with alcohol intake. We urge the passage and application of state laws to deal with drug impaired driving and that strict policies for obtaining evidence be adopted. The Council therefore supports expanding the supplemental grant criteria, to include prohibiting driving by persons under the influence of other controlled substances, in the 1982 Act.

The provisions establishing grants to the states to update recordkeeping systems so as to take advantage of the National Driver Register is strongly supported by the Council. We have testified in the past favoring the preservation and funding of NDR and we support the current effort to modernize the system.

The Council's position on measures to combat drinking and driving results from information and consultation provided by its well-regarded Committee on Alcohol and Other Drugs. The Committee membership includes nationally known authorities on various aspects of the subject. The Committee's recommendations were submitted by the Council to the Presidential Commission on Drunk Driving and were considered by that body in making its recommendations.

As Senator Danforth states in his comments introducing S. 1108, last year's law was "an important first step. But much more needs to be done to combat drunk driving." Unfortunately the provisions of the 1982 Drunk Driving Legislation have, based upon our "Policy Update" Surveys of Drunk Driving Law and our Checklist of State Countermeasure Activities, served to exclude any state from qualifying for the incentive grants thus far. Only a handful of states appear likely to qualify for funding in the near future, and those states may not in fact represent the most effective and comprehensive programs. The Council strongly recommends that the subcommittee undertake thorough hearings to examine what has happened throughout the states as a result of that legislation as it is considering new legislation. As part of these hearings, we urge the Congress to review in detail the Interim Report of the Presidential Commission on Drunk Driving and what steps have been taken towards its implementation.

Thank you, Mr. Chairman, for the opportunity to present our views on these very important issues.

CHILD RESTRAINT LAWS ENACTED IN 40 STATES

Child Passenger Safety advocates have worked diligently this year with spectacular results: 20 states passed child restraint laws in the first 5 months of 1983: Nevada and Colorado are the most recent states to report passage, bringing the total number of mandatory usage to 40. In addition, 6 states, including Illinois where efforts are underway to stengthen the current law, still have legislation pending. Currently, all states east of the Mississippi have mandatory use laws with the exception of Vermont, where conferees were unable to agree on a compromise of House and Senate versions, and Pennsylvania, where bills are still pending in a recalcitrant House. The Vermont bills will carry over intact to 1984, the second year of their session.

Our review of recent legislation indicates that more states are including safety belt provisions in their laws. In 1983, 17 of the 20 states with new laws had belt provisions; nationally, 20 of the 40 states allow belts to be substituted for restraints after a certain age. The statuatory age varies from state to state; approximately one-third of the states specify over 1 year of age, and one-third specify over 3 years of age. Three states, Massachusetts, Oregon, and Washington allow belt-use substitution at any under any circumstances. California allows it at any age if the parent is not driving and Oklahoma allows it in the rear seat only, at any age. Three other states, Michigan, Connecticut and South Carolina allow only rear seat belt substitution and only if the child is over 1 year old, and Nevada allows it only if the child is over 4 years old. Ohio and Maine have similar provisions to Calfiornia law and limit belt use substitution to non-parental driving situations only, but differ from California by stipulating that the child must be at least 1 year old. Additionally, Ohio law holds day care transporters to the same standard as parents, and does not allow them to substitute restraints for safety belts.

Clearly, use of the belt provision is one answer to the problem of parents who cannot or will not obtain child restraints. Research into the efficacy of belts versus restraints generally recognizes the superiority offered by the restraints. Many advocates however, including the Physicians for Automotive Safety feel that the laws need to address alternative methods of protection when restraints are not available. The fear that safety belts will seriously unjure a small child may be outweighed by injuries that occur when the child is not restrained in any manner. In the latter case, belts are the much preferred alternative. Additionally, with the linkage between child restraints and safety belts, it is expected that adult mandatory belt use laws may be easier to obtain in the future.

This year, Rhode Island narrowly missed becoming the first state to adopt a mandatory safety belt law for adults. Instead of passing SB227, the House agreed to appoint a special study committee and to seriously consider the Committee's recommendations when they report back early next year. Efforts are also underway in New York, where the chairman of the Transportation Committees in both the Assembly and the Senate have introduced joint bills. AB5059 and SB2191 would amend New York's current child restraint law by raising the age limit to 7 years old in 1984, and then raising it every year until 1987, when children 10 years old and under would have to restrained. The bills have passed the Transportation Committees in both Houses, the Senate version is awaiting floor action and the Assembly version is in the Codes Committee. Optimism is running high although the session is due to end June 14th. In Michigan, proponents of HB4203 are assessing House support at this time before deciding on their course of action. That bill would mandate belt use for all front seat passengers.

Since Tennessee's law in 1977 and Rhode Island's in 1980, over the past three years, the number of states with laws has grown steadily. Seven states were successful in 1981, 11 states in 1982 and 20 states so far this year. The focus seems to be shifting now Towards implementation of comprehensive programs to support the laws. Toward that end, a number of federal bills have been introduced that would provide money to states that have enacted legislation. HR2352, introduced by Congressman Mike Barnes (D-MD) would provide $25 million over 3 years to states that have mandatory child restraint laws and implement comprehensive programs. The state must have a law that includes children less than 5 years old or 40 lbs, or lesser ages and weight as determined by rulemaking. NHTSA rulemaking would also establish performance standards on effective program elements. Such standards could include, but would not be limited to, loaner programs, enforcement of laws, public information and education programs, and the training of personnel to use child restraints correctly. The state could qualify for a maximum of 25 percent of its fiscal year 1983 402 money. Congressman Al Gore (D-TN), a co-sponsor of the Barnes bill will introduce his own legislation in mid-June. His current draft would provide $48 million over 6 years and would also include a pedestrian safety program. The proposed Gore bill appears to be much more specification-oriented than Barnes' version. It is expected that the House Public Works and Transportation Committee will consider these bills by late summer.

On the Senate side, S. 1108 introduced by Senator John Danforth (R-MO) would provide $10 million the first year and $20 million in the second year to States that adopt child restraint laws. The money in S. 1108 would be limited to 10 percent of a State's current 402 funds, would be available only once to any State, and would be earmarked for enforcement assistance only.

Included with the UPDATE is a compilation of the 40 State child restraint laws and the pending legislation as of May 18th. We welcome all comments.

CHILD RESTRAINT LAWS-MAY 18, 1983

STATE	DESCRIPTION
ALABAMA S24 Enacted 1982	All children less than 3yrs old must be in c.r. when riding in m.v. registered in state. Fine not to exceed $10. Effective 7/1/82.
ARIZONA HB2312 Enacted 1983	All children less than 4yrs old must be in c.r. when riding in non-commercial m.v. owned/operated by parent/l.g. and registered in state. If limited-seating vehicle(sports car), at least 1 child must be restrained. Warning only until 7/1/84, thereafter $50 fine, waived upon acquisition. Hospitals must provide new parents with copy of law and information on community loaner programs. Child Passenger Restraint Fund to be established from fine monies and donations to be used to purchase c.r.'s for indigent people.
ARKANSAS HB454 Enacted 1983	All children less than 5yrs old must be in c.r. when riding in m.v., pick-up, van registered in state and driven by someone who regularly transports children (definition not given). Between 3-5yrs old, safety belt may be substituted. Warning only for 1st year, thereafter $15-25 fine, waivable. $ earmarked for loaner, educational programs. Effective 8/1/83.
CALIFORNIA SB537 Enacted 1982	All children less than 4yrs old or weighing less than 40lbs must be in c.r. when riding in m.v. weighing less than 6001lbs, registered in state and operated by parent/l.g. If parent/l.g. is not driving, safety belt may be substituted. Driver subject to fine if parent not in car, otherwise parent whether driving or not driving is subject to fine. Ticket waived upon acquisition of seat if first offense. $50 fine for 2nd offense, additional $50 for subsequent offenses up to maximum of $200. Effective 1/1/83.
COLORADO HB1070 Enacted 1983	All chldren less than 4yrs and 40lbs must be in c.r. when riding in m.v. driven by resident of state. $25 fine, waivable. Passed both Houses in mid-May, to be signed by Gov. in mid-June. Eff. 1/1/84.
CONN. S42 Enacted 1982	All children less than 4yrs old must be in c.r. when riding in passenger m.v. in the state. Safety belt may be substituted for children between 1-4yrs if riding in back seat only. Exemption for R.V.'s, trucks weighing over 1 ton. Fine $15-100, waived upon acquisition and installation of seat. Effective 10/1/82.
DELAWARE HB154 Enacted 1982	All children less than 4yrs old must be in c.r. when riding in m.v. owned/operation by resident parent/l.g. $25 fine waived upon acquisition of c.r. Effective 6/2/82. Fine effective 8/2/82. State-wide loaner program in place.
DISTRICT OF COLUMBIA 4-434 Enacted 1982	All children less than 6yrs old must be in c.r. when riding in m.v. registered in D.C. From 3-6yrs, safety belt may be substituted. Exemption if # of children in one family exceeds # of seating positions, all available belts must be used. $25 fine, waivable for 1st offense only. (Parent or driver can submit proof). Approved by U.S. Congress 3/83. Effective 7/1/83.
FLORIDA HB289 Enacted 1982	All children less than 6yrs old must be in c.r. when riding in passenger m.v. or pick-up truck registered in Florida and owned/operated by parent/l.g. Safety belt may be substituted for children from 4 to 6yrs. $15 fine, waived upon proof of purchase. Effective 7/1/83.
GEORGIA SB59 Enacted 1983	All children less than 4yrs must be in c.r. when riding in m.v. registered in state. Between the ages of 3-4yrs, safety belt may be substituted. Exemption for car pools, attending to personal needs of child. Max. $25 fine, waivable. Effective 7/1/84.

HAWAII HB890 Enacted 1983	All children less than 4yrs old must be in c.r. when riding in m.v. From 3-4yrs, safety belt may be substituted. If number of people exceeds the number of available safety belts, all belts must be in use and unrestrained children must be in rear seat. Max. $100.00 fine. Gov. has until 6/14 to veto or 6/28 to sign. Effective 7/1/83.
HB2742 Enacted 1982	$25 income tax credit for purchase of c.r. Signed by Gov. 7/27/82. Retroactive impact 1/1/82.
KANSAS HB2208 Enacted 1981	All children less than 2yrs old must be in c.r. when riding in front seat of passenger m.v. owned/operated by parent/l.g. Oral warning only. DOT to develop program of public information. Effectiva 1/1/82.
ILLINOIS HB608 Enacted 1982	All children less than 2yrs old must be in c.r. when riding in passenger m.v. owned/operated by resident parent/l.g. Between 4-6yrs, safety belt may be substituted. Effective 7/1/83. Beginning 7/1/84, children between 2-4yrs must be in c.r. as well. First offense, warning violation only, subsequent offenses will be max. $25 fine. Exception for attending to personal needs of child.
INDIANA SB172 Enacted 1983	All children less than 5yrs old must be in c.r. when riding in m.v. registered in Indiana excluding taxis & rental vehicles. Between ages of 3-5yrs, safety belt may be substituted. Class C infraction. $50-500, waivable, otherwise judge may order acquisition within 30 days. Effective 1/1/84.
KENTUCKY SB2 Enacted 1982	All children less than 40inches tall must be in c.r. when riding in m.v. owned/operated by parent/l.g. No fine. Effective 7/15/82.
MAINE LB910 Enacted 1983	All children less than 1yr old must be in c.r. when riding in m.v., registered in state and required to be equipped with safety belts. If driven by parent/l.g., children between 1-4yrs must be in c.r. If driven by someone else, safety belt may be substituted. Exemption for both cases, if child is between 1-4yrs and all seating positions are occupied. No exemption for children less than 1yr old. Warning only for first 6 months, thereafter $25 fine for 1st violation, $50 for 2nd and subsequent. Waivable for 1st offense only. Effective 90 dys after Legislature adjourns, approximately mid-October 1983.
MARYLAND SB437 Enacted 1983	All children less than 5yrs old must be in c.r. when riding in passenger or multipurpose m.v. registered in state. Between ages of 3-5yrs, safety belt may be substituted. If number of children exceeds number of seating positions, all available positions must be utilized by children. $25 fine, waivable. To be signed 5/24. Effective 1/1/84.
MASS. HB7162 Enacted 1981	All children less than 5yrs old must be in c.r. or safety belts when riding in m.v. Exemption for taxis, vehicles not equipped with safety belts, if all other seating positions equipped with safety belts are occupied, or if child is physically unable to use restraints. Fine not to exceed $25, waived upon proof of acquisition. Effective 1/1/82.
MICHIGAN SB115 Enacted 1981	All children less than 4yrs old must be in c.r. when riding in m.v. operated by resident driver. From 1-4yrs, safety belts may be substituted if riding in back seat. Exemption for nursing mothers. Fine not to exceed $15, waived upon proof of acquisition. Effective 4/1/82.

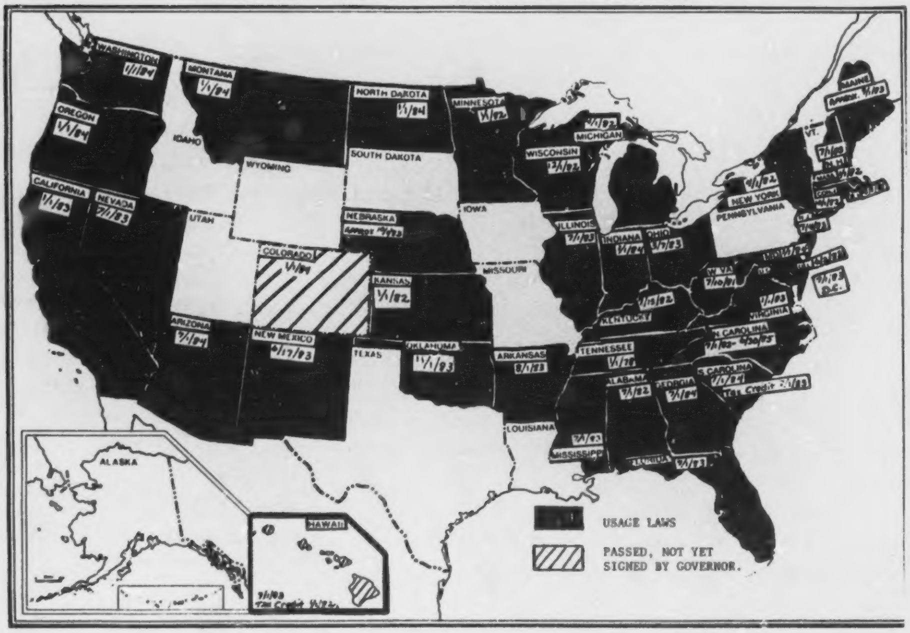
MINNESOTA SF263 Enacted 1981	All children less than 4yrs old must be in c.r. when riding in m.v. owned/operated by parents/l.g. No fine, hazard warning only. Effective 1/1/82.
MISS. HB114 Enacted 1983	All children less than 3yrs old must be in c.r. when riding in m.v. registered in state. Exempts trucks, buses weighing more than 1 ton. $10 fine, waivable. Notice of this requirement will accompany delivery of m.v. license tags. Effective 7/1/83.
MONTANA SB22 Enacted 1983	All children less than 4yrs or 40lbs must be in c.r. when riding in m.v. driven by resident parent/l.g. or spouse. From 2-4yrs, safety belt may be substituted. $10-25, waivable upon acquisition of c.r. within 30 days. Effective 1/1/84.
NEBRASKA LB69 Enacted 1982	Any person furnishing child care must use c.r. when transporting all children less than 1yr old. Seat belt can be substituted for children over 1yr old. No upper age limit. Driver subject to fine and Child Care Center subject to license (to furnish child care) suspension/revocation. Effective 7/17/82.
LB306 Enacted 1983	All children less than 4yrs old must be in c.r. when riding in m.v. driven by resident of state. Between ages of 1-4yrs, safety belt may be substituted. Exemption for physical or medical reasons, must carry physician's statement $25 fine, waivable. Effective 90 days after legislature adjourns, approximately 9/1/83.
NEVADA AB307 Enacted 1983	All children less than 5yrs old must be in c.r when riding in m.v. registered in state. Between the ages of 4 and 5yrs, safety belt may be substituted in rear seat only. Exemption if more children than seating positions, preference given to children less than 3yrs, and all unrestrained children must ride in back seat only. $35-100 fine, waivable. To be signed by Gov. around 5/20. Effect. 7/1/83.
NEW HAMP. HB62 Enacted 1983	All children less than 5yrs old must be in c.r. or safety belt when riding in m.v. Exception for vehicles for hire. $30 fine, waivable. Effective 7/1/83.
NEW JERSEY A851 Enacted 1983	All children less than 5yrs must be in c.r. when riding in m.v. in N.J. From 18mths to 5yrs, safety belt may be substituted in rear seat only. Exemption if number of children in one family exceed # of available belts, all unrestrained children must be in back seat. $10-25 fine, waivable upon proof of acquisition. Effective 7/4/83.
NEW MEXICO SB50 Enacted 1983	All children less than 5yrs must be in c.r. when riding in passenger car, van or pick-up in registered in state. Between 1-5yrs, safety belt may be substituted in rear seat only. $50 fine, waivable. Effect. 6/17/83.
NEW YORK S3639 Enacted 1981 Amend. S8679 Enacted 1982	Originally all children less than 5yrs old must be c.r. when riding in passenger m.v. registered in state. Amended in the 82 session to children less than 4yrs old in c.r. and 4-5yrs old in c.r. or safety belts. Also amended to remove emergency vehicles from compliance. Fine of not more than $25, waived upon proof of purchase or rental of seat. Effective 4/1/82.
NORTH CAROLINA HB893 Enacted 1981	All children less than 2yrs old must be in c.r. when riding in m.v. registered in state and owned/operated by parent/l.g. Between 1-2yrs, safety belt may be substituted. Exemption if child is occupying seat where safety belts not required, and while attending to personal needs of child. Warning ticket from 7/1/82 to 6/30/84, thereafter $10 fine. UNC-HSRC will conduct effectiveness study. Effective 7/1/82 to 6/30/85.
N. DAKOTA H1587 Enacted 1983	All children less than 4yrs old must be in c.r. when riding in passenger m.v. driven by parent/l.g. Between the ages of 2-4yrs, safety belt may be substituted. $20, waivable. Effective 1/1/84.

OHIO HB605 Enacted 1982	All children less than 4yrs or weighing less than 40lbs must be in c.r. when riding in m.v. owned/operated by parent/l.g. or day care center. If riding in m.v. other than those listed above but driven by resident of state, less than 1yr old must be in c.r. and 1-4yrs old, safety belts can be substituted. Exemptions for taxis and life-threatening situations. $10 fine waived upon acquisition of seat. Effective 3/7/83.
OKLAHOMA HB1005 Enacted 1983	All children less than 4yrs must be in c.r. when riding in front seat, or seat belt when riding in rear seat of m.v. driven by resident of state. Between 4-5yrs, safety belt can be substituted in front seat. Exemption if more children than seating positions and no fine. Effective 11/1/83.
OREGON SB293 Enacted 1983	All children less than 5yrs old must be in c.r. or safety belt when riding in m.v. registered in state. Exemption if all seating positions are occupied. Exemption for physical or medical reasons must obtain written statement from physician and DMV will issue certificate. No fine for first 6mths, thereafter $20, waivable upon acquisition. Effective 1/1/84.
RHODE ISLAND H5730 Enacted 1980	All children less than 3yrs must be in c.r. when riding in front seat of m.v. $15 fine. Effective 7/1/80. Amended to include back seat. Fine waived upon proof of purchase. Effective 4/81.
S. CAROLINA A350 Enacted 1983	All children less than 4yrs must be in c.r. when riding in m.v. registered in state. Between 1-4yrs old, safety belt can be substituted in back seat only. If more people than seating positions, priority given to children less than 3yrs old. Exemption for feeding or medical problems. $25 fine, waivable. Tax credit for purchase, exempt taxis, emergency vehicles. Effective 7/1/84. Tax credit effective 7/1/83.
TENNESSEE HB300 Enacted 1977	All children less than 4yrs old must be in c.r. or held in arms of older passenger when riding in m.v. owned/operated by parent/l.g. Exemption for trucks, r.v.'s $2-10 fine. Effective 1/1/78. Amended to exclude being held in the arms except when mother is attending to needs of child. Effective 4/1/81.
VIRGINIA HB413 Enacted 1982	All children less than 4yrs old must be in c.r. when riding in m.v. registered in state and owned/operated by parent/l.g. Between ages of 3-4yrs, safety belt may be substituted. $25 fine waived upon proof of acquisition or for financial inability. Fine money earmarked for state loaner programs. Effective 1/1/83.
WASHINGTON SB3203 Enacted 1983	All children less than 5yrs old must be in c.r. when riding in m.v. owned/operated by parent/l.g. Between 1-5yrs old, safety belt may be substituted. Warning only from 1/1/84 to 7/1/84, thereafter minimum $30 fine waivable.
WEST VIRGINA HB517 Enacted 1981	All children less than 5yrs old must be in c.r. when riding in m.v. registered in state. Safety belt can be substituted for 3-4yrs old. $10-20 fine waived upon proof of purchase. Effective 7/10/81.
WISCONSIN AB600 Enacted 1982	All children less than 2yrs old must in c.r. when riding in m.v. owned/operated by parent/l.g. From 2-4yrs, safety belt may be substituted. Fine for child under 2yrs is $30-75. Fine for child between 2-4yrs, $10-25; if 2nd offense within 3yrs, $25-200. Effective 12/1/82.

STATE	DESCRIPTION OF PENDING LEGISLATION
ALASKA HB262	Intro. by Rep. Clocksin. All children less than 6yrs old must be in c.r. when riding in non-commerical m.v. Between ages of 4 and 6yrs, safety belt may be substituted. Exemption if all seating positions are occupied or for physical/medical reasons. Fine unclear, points may be assessed unless c.r. is acquired within 30days of citation. Loaner program established. Dept. of Public Safety to provide c.r.'s to hospitals & birthing ctrs as funds are available. Police to advise cited vehicles of loaner programs. No seat may be sold, installed unless meets FMVSS 213. Non-use may be admitted into evidence as negligence in civil action. This is a Comm. substitute. Passed first 2 Comm. in third Comm. now. Session to end around 6/15/83.
	Intro. by Sen Fischer. Similiar to HB262 except nothing about loaner programs, no prohibition against selling seats not meeting 213, and nothing about liability issue. This is a Comm. substitute. Passed first Comm. Awaiting date for floor vote.
ILLINOIS HB1	Amendment to current law. Would include requirement that children between the ages of 2 and 4yrs be restrained in c.r. this year (rather than 7/1/84). Deletes warning provision for first offense (Il. has no method of recording warnings on licenses) and adds $25 fine instead. Passed House 83-23. In Senate Committee, committee vote expected 6/3/83.
LOUISIANA HB218	Intro. by Rep. Baker. All children less than 5yrs old must be in c.r. when riding in privately-owned m.v. driven by resident of state. Between 3 and 5yrs, safety belt may be substituted in rear seat only. Exemption if # of children in one family exceed # of available safety belts, all unrestrained children must be in rear seat only. Also exemption for emergency or for medical/physical problems. Warning only until 1/1/84, thereafter $25-50 fine, waivable. Passed House, wide margin in mid-May. In Senate Committee.
MISSOURI HB29	Intro. by Rep. Reeves. All children less than 4yrs old must be in restrained in c.r. when riding in front seat of m.v. owned/operated by parent/l.g. If riding in rear seat, safety belt may be substituted. If more children than seating positions, all unrestrained children must be in back seat. $15 fine, waivable for installation or financial inability. Evidence of non-restraint use may be admissable in civil suit. Effect. 1/84. Passed House in mid-March. Passed Senate Committee 5/17 with amendment raising fine from $15 not including court costs to $50 including court costs. Session due to end around 6/15/83.
PENN. SB21	Intro. by Rep. Holl. All children less than 4yrs old or under 40lbs must be in c.r. when riding in m.v registered in state. $50 fine, waivable. Exemption for physical/medical problems. Original bill had hazard warning only. 35-34 vote added fine and then passed Senate 38-10. In House Consumer Affairs Comm.
HB134	All children less than 4yrs or 40lbs must be in c.r. when riding in passenger m.v. registered in state. $25 fine, waivable. Rep Arty. In House Consumer Affairs Comm. Expect to be combined with SB21.

STATE	DESCRIPTION OF PENDING LEGISLATION
PA cont'd HB3	All children less than 4yrs old must be in c.r. when riding in m.v. owned/operated by parent/l.g. $25 fine, waivable. Exemption if physically/medically unable. Intro. by Rep Arty, Greenwood. In Transportation Comm. Major efforts being focussed on other 2 bills.
TEXAS SB6 HB3	All children less than 4yrs must be in c.r. when riding in m.v. registered in state. $25-50 fine. Effective 9/1/83. Intro. by Rep. Schlueter and Sen. Parker. Passed Senate on voice vote, 1/26/83. Passed House Comm. with belt amend. for 3-4yr olds. Awaiting date for Floor vote. Session ends 5/30.
HB27	All children less than 4yrs old must be in c.r. when riding in m.v. owned/operated by parent/l.g. $25-50 fine, waivable. Effect. 9/1/83. Intro. by Rep. Hill. In Trans. Comm. Efforts being put toward SB6.
HB138	All children less than 5yrs old must be in c.r. when riding in m.v. owned/operated by resident parent/l.g. $25-50 fine, waivable. Eff. 9/1/83. Intro. by Rep. Wilson. In Trans. Comm. Efforts being put toward SB6.

CHILD RESTRAINT LAWS AND IMPLEMENTATION DATES - MAY 24, 1983


WASHINGTON 1/1/84
MONTANA 1/1/84
NORTH DAKOTA 1/1/84
MINNESOTA 1/1/82
OREGON 1/1/84
IDAHO
MICHIGAN 4/1/82
WISCONSIN 12/1/82
SOUTH DAKOTA
WYOMING
CALIFORNIA 1/1/83
NEVADA 7/1/83
UTAH
NEBRASKA
IOWA
ILLINOIS 7/1/83
INDIANA 1/1/84
OHIO 3/7/83
NEW YORK 4/1/82
PENNSYLVANIA
COLORADO 1/1/84
MISSOURI
KANSAS 1/1/82
W VA 7/10/81
KENTUCKY 7/15/82
VIRGINIA 1/1/83
D.C.
ARIZONA 9/1/84
NEW MEXICO 6/17/83
TEXAS
OKLAHOMA 11/1/83
ARKANSAS 8/1/83
TENNESSEE 1/1/78
N CAROLINA 7/1/82- 6/30/85
ALABAMA 7/1/82
GEORGIA 7/1/84
S CAROLINA 7/1/84
Tax Credit 7/1/83
LOUISIANA
MISSISSIPPI 7/1/83
FLORIDA 7/1/83
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VT.
N.H.
ALASKA
HAWAII
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PASSED, NOT YET SIGNED BY GOVERNOR.

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Senator Danforth. Mrs. Nathanson and Mr. Kunec. Mrs. Nathanson, would you like to go first.

STATEMENTS OF FRAN NATHANSON, COFOUNDER, CITIZENS FOR SAFE DRIVERS AGAINST DRUNK DRIVERS (CSD); AND EDWARD KUNEC, PRESIDENT, NORTHERN VIRGINIA CHAPTER, MOTHERS AGAINST DRUNK DRIVERS (MADD)

Mrs. Nathanson. Thank you, Mr. Chairman and members of this committee, for the opportunity to discuss with you the Drunk and Drugged Driving Prevention Act of 1983.

I am Fran Nathanson, cofounder of Citizens for Safe Drivers Against Drunk Drivers and Other Chronic Offenders, the oldest national citizens public interest group working on this problem.

I am not going to recount to you all of the statistics and the horrors of drunk driving. You know them.

We are particularly pleased that you are urging incentives to improve computerization of traffic records in the States. This is an issue which we have been working on since the highway death of our 14-year-old daughter Kamy in 1975, the day after Christmas. She was killed in the State of Rhode Island by a tractor-trailer whose driver was under his seventh suspension from his home State of New Jersey at the time of the crash and was driving on a license from the State of Arizona.

We soon learned that loopholes in interstate driver records were a major problem nationwide, and that is why we were originally founded as Citizens for Better Driver Records. At that time, we began to stress to the public, to the Congress, to safety officials and to the media the importance of complete, accurate and timely driver records in solving problems of drunk drivers and other chronic offenders.

In particular, our first goal was the improvement of the National Driver Register—NDR. Passage of the National Driver Register law last session, for which we worked over 7 years and in which this committee was so instrumental, represents a significant landmark.

CSD played a leading role in getting the current administration to reverse its decision from killing the NDR to strengthening it. We are pleased that your introductory section to this bill specifies that it:

> Will provide Federal grants to States for 3 years to upgrade their records systems. These updated systems at the State level should then be ready to work with the computer NDR systems established under Public Law 97-364. This system will also enhance State enforcement of drunk and drugged driving laws, as well as general highway safety laws.

We are concerned, however, that the bill itself as currently drafted fails to make this connection clearly. Page 19, lines 12 through 15, specifies that accident records are covered in your bill, but it should also expressly state that the purpose of this section is to enable States to participate fully in the NDR, just as you have spelled out in your introduction to the bill.

All States currently have some degree of computerization of drunk driver and other traffic records. In most cases they do not need significant additional computer hardware and equipment, but they do require more software development. This will involve modifying the computer software to transmit and receive data over the NDR network and to insure greater compatibility for interstate communications.

Currently, NHTSA is beginning a study to determine criteria to enable the States to prepare for the NDR online system. By the time the Federal grant money is available under your bill, NHTSA should have a system designed and regulations ready to establish this criteria.

In brief, we specifically recommend that this section be changed to reflect your intent that grants be used to better enable States to fully participate in the NDR. We also recommend that this bill specify that incentives be given for greater interstate exchange of records on a regular basis. Some States never send information about out-of-State violations back to the driver's home State. Other States, when they do receive these convictions on their drivers for an out-of-State violation, just throw them in the wastebasket.

Constant interstate exchange is needed so that convictions outside of the home State are considered when the court sentences a driver for in-State violations. Otherwise, persons whose only convictions are within their home State are treated far more harshly than those with equal or greater violations from other States.

States should be encouraged to provide a single driver record for each driver. Interstate compatibility of computer network systems can speed this process, as well as be compatible with the NDR network.

In our highly mobile society, the drunk driver from one State often kills or maims someone in another State. Statistics from 1981 indicate that an average of 12 percent of all fatalities are caused by out-of-State drivers, and 11 States have 25 percent or more deaths caused by out-of-State drivers.

Grants should also cover improvements to achieve complete, accurate and timely reporting of convictions from the courts to the central State files. Some judges just put their convictions in their desk drawers, instead of sending them in regularly. A recent news article in northern Virginia indicated that Arlington County courts were 1½ years behind in sending convictions back to the central file in Richmond.

We feel that computer terminals in the courts to provide direct access to the State files would help alleviate this problem, and it would encourage greater use in sentencing. This is extremely important in handling drunk driving problems.

We also feel another means of help is uniform ticketing, and we feel strongly that the minimum drinking age of 21 is an important provision which all States should adopt. Your funding for this purpose as you recommend in the bill is absolutely essential.

We also feel that we would like to point out that no one provision, however, is going to solve this drunk driving problem. We need an integrated approach. We need better laws, better enforcement, better education. We also need citizen involvement and public awareness.

In summary, we applaud the objectives of this bill, which recognize the relation between driver and traffic records and highway safety and provides incentives so that the States can modernize and upgrade their systems to participate more fully in the NDR and improved highway safety as a whole.

When we first began working on this program over 7 years ago, the general response to us was, "driver records, what's that?" Your bill today is evidence of the growing recognition that driver records are a unique and effective tool to detect, monitor and control drunk drivers and other chronic offenders, and thereby reduce highway deaths and maimings, which are so overrepresented by these problem drivers.

In this age of computerization when more and more facets of daily living are simplified and speeded up by electronic techniques, the modernization of computer systems for the transmittal of driver records within States, between States, and with the Federal Government through the NDR is essential.

Last year's alcohol incentive law, as well as the Presidential Commission on Drunk Driving, established goals for greater uniformity among the States in dealing with the drinking and drugged driver. Your bill will help the States achieve that goal.

Senator DANFORTH. Thank you very much. Mr. Kunec?

Mr. KUNEC. Thank you, Mr. Chairman.

Mr. Beggs, the National Aeronautics and Space Administration Administrator, made a statement the other day that captured my attention. It goes like this: "The good Lord gave us time and resources to work with, to improve our way of life." That is a truism, except that time for some of us is cut short because of irresponsible acts of irresponsible drunk drivers who kill too many of our innocents.

As a member of MADD, Mothers Against Drunk Drivers, with 153 chapters in 38 States, made up of concerned citizens and victims of drunk drivers, we applaud actions taken by this committee to act in the public interest. It is time the message gets out to the drunk driver that his or her actions will not be tolerated any longer.

State legislatures need to join with our national leaders to start passing new model laws which will be uniform from State to State, because we live in a mobile society, and our citizens need to be protected by uniform laws as they travel around the country. Our national leadership should provide sufficient incentive to the States to make nonconformance undesirable.

Let me repeat this last sentence, sir. Our national leadership should provide sufficient incentive to the States to make nonconformance undesirable.

The necessity for uniformity of States' laws became evident to me and my wife personally when our 20-year-old son, Ed, a Virginian, was killed by a drunk driver, Mark Wilson Buyck III, of Florence, S.C., almost 2 years ago in the State of Maryland. Mark Buyck's driver's license was never taken for even 1 day.

The cold hard fact is: reciprocity between States does not work. Although the State of Maryland, which has reciprocal agreements with the State of South Carolina, suspended the drunk driver's license in Maryland for 1 year, we have been notified by the attorney general of South Carolina that no suspension action will be taken on the drunk driver of South Carolina or driver's license. The reason: Because South Carolina does not have on its books the statute of homicide by motor vehicle while intoxicated, the statute to which the drunk driver pleaded guilty and on which he was convicted in Maryland.

What kind of reciprocity is this? And what kind of legislatures and what kind of judges do we have when Judge Raymond Kane of the circuit court of Howard County, Maryland, states that the Maryland Legislature has not found this crime horrible enough to call for a mandatory penalty, and therefore allows him, the judge, to "use his discretion" in sentencing?

We have seen that judges' discretion is invariably tilted in favor of the offender, as it was for the drunk driver who killed our son. The judge did not believe that sending this drunk driver to jail for 2 years, which he was permitted to do under the law, "would frighten the public so they would not drink and drive."

He gave this drunk driver a choice of either 3 months in jail or 6 months of community service, and that sentence has not yet been passed, and it will not be passed until as early as May 31, 1983.

What kind of judges do we have, and what kind of justice is this? We, the victims, continue to be victimized. When will our legislatures and judges begin to perceive this violent act for the crime that it is, murder by motor vehicle, and impose mandatory sanctions that will be uniform throughout the States and severe enough to get the attention of drunk drivers and deter them?

We encourage our national legislators and this committee to continue to vigorously pursue every means to bring an end to the crime of drunk driving. Yes; the good Lord gave us time and resources to work with to improve our lives. Let us use them. Time will not wait for us to take advantage of saving our most precious resource, human life.

Thank you, sir.

Senator **Danforth**. Let me thank you both very much for your very fine statements, very helpful statements. In a moment, I am going to ask you to do what I asked Governor Volpe to do. I have absolutely no role to play in what the television stations show. All I can do, now that the cameras are here, is give them an opportunity to take a picture of something, and let us see what happens.

Each of you is the parent of a child killed by a drunk driver. We are now in the commencement season, and a lot of kids are going to be drinking, and I suppose when you are drinking you think, well, maybe that is only my own life at stake, but you can take other lives, too, as each of you know so well and so tragically.

And in just a minute I want to give you an opportunity to speak at this commencement season to kids who are about to graduate and who are going to go partying, and to express to them whatever message you want to say, hopefully in very short form, because they will not broadcast everything on the television, but hopefully in as short and concise form as you can, as to what is involved in the tragedy to other people, families, what happens when people drive when they are drunk.

And while you are thinking about that, I just want to make one comment to you. About 10 years or so ago, I was the attorney general of our State, and I got interested in the subject of drunk driving, and our office researched all of the laws around the country, and put together a bill which we thought was just a fine bill, very,

very tough. Not only did it not get anywhere; I do not even know that it had a hearing in the State legislature. We had a very difficult time getting anybody to introduce the bill.

Now we have passed an incentive bill in the Congress. Many, many States are addressing the question. They are passing laws. Delaware, as we heard today, is making major steps with really great success. I am absolutely confident that but for the efforts of citizens' groups in this area, nothing would have been accomplished, nothing.

Legislators are politicians, and they respond to the voice of the public, and if they think the public wants light little slaps on the wrist, if they think the public believes that driving while drunk is funny, or that it is unfair to suspend licenses of drunks, or that somehow it is unfair to stop people on the streets who are suspected of being drunk while driving, if that is what the public wants, the legislatures are going to give them nothing in legislation.

If, on the other hand, citizens are mobilized, and make it a point to press this issue as hard as they can in whatever form they can, then legislatures will act as they have been acting, so every bit of progress that we have made has been in direct answer to the demands that you have made, and people like you throughout the country.

So, I appreciate your attention. Now, I would like you, if you would, to just respond to my question, which is, What would you say to 17- and 18-year-old kids who are now graduating from high school and who may go out partying?

Mrs. **Nathanson**. I know that you who are going out to mark the ending of your high school or college career and going on to the next step, feel that you want to celebrate. Enjoy yourselves. But remember, you are not invulnerable. When we talk to teenagers, we have often found that they feel they are invulnerable—nothing is going to happen to them.

They cannot conceive of either their death or the possibility of an accident that they might cause which would kill others. And it is hard for them to see and to recognize the shattering effects not only on the loss of that child, the person who is killed, but the loss to society, the loss to the family, the loss to the community of that person. We just beg you to stop and think before you step into a car after you have had a drink. Please, pick someone in your group who will not drink, will not take one drop that night, to be the driver of the car.

Mr. **Kunec**. I would just say that we as parents and friends love you, and we want you to have a good time, but we want you to use your head. Do not let others influence you. Life is fragile. Protect it, and it will take care of you with a long life and a good future.

Senator **Danforth**. Thank you both very much.

Mrs. **Nathanson**. Thank you.

Mr. **Kunec**. Thank you.

Senator **Danforth**. Mr. Clarke and Mr. Reagan. Mr. Clarke, would you like to go first, please?

STATEMENTS OF CHARLES C. CLARKE, EXECUTIVE VICE PRESIDENT, INSURANCE INFORMATION INSTITUTE; AND JAMES E. REAGAN, SENIOR VICE PRESIDENT, GOVERNMENT EMPLOYEES INSURANCE CO.

Mr. **Clarke**. Thank you.

The Insurance Information Institute is a nonprofit educational research and communications association with more than 250 property casualty insurance company members. We do not engage in lobbying. Our industry is represented by other associations in both Federal and State legislative matters, but we have been highly active in safety issues since our formation in 1960.

Senator **Danforth**. Could you speak a little more directly into the microphone, please?

Mr. **Clarke**. The problem of drunk driving for the past 18 months has been perhaps our most prominent campaign. Last November here in Washington we cosponsored an international symposium on alcohol and driving that attracted nearly 600 persons representing all States and several foreign countries and all major interest groups. Some 60 representatives of the media covered the conference.

Out of that conference was constructed a multifaceted communications program, including national advertising as well as a motion picture, to be released in a few days. We learned a lot at that conference, and I think much of what we learned and which is in my statement, which I will not read, covers points made here today.

The principal one, I think, is that all groups concerned with this problem recognize the need to make drinking and driving socially unacceptable, and that there are communications techniques that will permit us to do that, just as it has been done with the problems of smoking, health, and the conservation of energy.

We encourage all groups concerned with this problem to do what they can to build communications messages, but more concretely, though we do not believe in an attempt to standardize all messages, we did propose on September 8 that the Presidential Commission on Drunk Driving create a national leadership group to promote public education. This group could serve to increase communication among all organizations and individuals interested in the problem. It should reduce the time and money as we share our work and the results of trial and error.

It could serve as a clearinghouse for evaluating and letting everyone know what works and what does not, and it may generate valuable cooperation and some joint programs among the dozens of private sector volunteer and government organizations involved in drunk-driving campaigns.

We hope you will support this suggestion for a national leadership group. After all, its major role may turn out to be to provide the mutual reinforcement necessary to keep up the pressure and good work of activist organizations as well as government, business, and industry.

But no matter what commitment we make individually or organizationally, I hope you remember it is not the activity we engage in that represents accomplishment. The only real accomplishment is dramatic and sustained reduction in deaths and injuries.

On behalf of the institute and its member companies, I want to thank you for this opportunity to express our point of view.

[The statement follows:]

Statement of Charles C. Clarke, Executive Vice President, Insurance Information Institute

The Insurance Information Institute is a nonprofit educational, research and communications association with more than 250 property-casualty insurance company members. Our headquarters are in New York, with 11 field offices countrywide, including one here in Washington, D.C.

While we do not engage in lobbying—our industry is represented by other associations for federal and state legislative matters—we have been highly active in safety issues since our formation in 1960. The problem of drunk driving has been perhaps our most prominent campaign during the last 18 months.

Last November, here in Washington we co-sponsored the International Symposium on Alcohol and Driving, which attracted nearly 600 persons representing all states, several foreign countries and all major interest groups. Some 60 representatives of the media covered the award-winning conference.

That's been followed by a digest of the proceedings, an action brochure for citizens, a television public service announcement, a thought-leader magazine advertising campaign and, in a couple of days, by the release of a motion picture designed to accompany community speeches urging local action against drunk driving.

Much work, of course, continues to be needed.

The flurry of activity in the individual states is encouraging, but we're quite a distance from effective legal deterrence of drunk driving. Similarly, we're a long way from moderating the destructive use of alcohol or virtually eliminating its use, publicly anyway, by teens. And, our overall record in the rehabilitation of chronic alcohol abusers leaves considerable ground for improvement.

I don't list all this to suggest we're failing or will fail. It does set the stage for me to underscore the need to concentrate resources on changing public attitudes and behavior.

After all, deterrence cannot succeed without genuine public support. No law works without explicit *and* tacit support in our democratic society. Changes in alcohol usage patterns and perhaps more success in rehabilitation may flow from increased public understanding and acceptance of the need for control of alcohol abuses.

But public education has a mixed track record. Can it succeed?

Drunk driving, certainly, is an emotional enough issue. Some three-quarters of a million persons are killed or injured each year because of alcohol-related accidents on the road.

Certainly, it's enough of a local issue to attract broad support. The hurt affects every community. It has given rise to the grassroots groups which have added unprecedented strength to the drunk driving movement. If their tone remains moderate and mainstream, these local groups will continue to energize us all.

But they can't do it alone. No one group, no one segment of society, no quarter of the country can carry the weight of the entire effort.

Public education on alcohol abuse and drunk driving can succeed.

We have seen changes in public attitude and behavior, which have surprised us by their extent and their acceptance:

Per capita smoking rates have declined, and society does put limits on the use of cigarettes, cigars and pipes.

Energy conservation is a more dramatic part of reduced energy consumption than almost anyone thought possible in 1975.

Americans are healthier because we're eating better and exercising more.

These changes occurred because of public education campaigns.

But it wasn't one super campaign. It wasn't the work of one public interest group or one Presidential Commission or one comprehensive research study. Not one of anything caused the changes in public attitude.

On these issues the public received an extraordinary number of messages. Many were controversial, some highly disputed. Many messages attempted to frighten the public and perhaps backfired, but others were more dispassionate, unsettling and persuasive.

Today, it's obvious that these messages are bearing fruit.

Similarly, changes in public attitudes and behavior can make alcohol abuse and drunk driving socially unacceptable if we continue a similar and extended barrage of messages—through speeches, research, conferences, legislation, media coverage, political campaigns, songs and movies, advertisements, grassroots organizing and even games. Any medium is important. Any relevant message will help. Our major task: keep the issue alive and current.

Perhaps most important: let's not lull ourselves into thinking that any time frame shorter than a decade will produce enduring results. Fighting alcohol abuse and drunk driving must persevere as an important social problem on our national agenda into the 1990s.

What can Congress do? As I've noted, it's not our purpose to recommend or support specific legislation. But, there's much you can do simply because of the influence you have—as individuals and as officeholders—in your home states and local communities. For instance, why not commit yourselves—each of you—to making at least one well-publicized speech a year on the subject of alcohol abuse and drunk driving?

In any event, do whatever you can to assure that a varied but steady stream of information reaches the public month in and month out.

Finally and more concretely, though we don't believe in an attempt to standardize all messages, we did propose on Sept. 8 that the Presidential Commission on Drunk Driving create a national leadership group to promote public education on drunk driving. This group would serve to increase communication among all organizations and individuals interested in the problem of drunk driving. It won't and shouldn't eliminate duplication, but it may reduce the waste of time and money as we share creative work, research, and the results of our trial and error. It could serve as a clearinghouse for evaluating and letting everyone know what works and what doesn't. And it may generate valuable cooperation on some joint programs among the dozens of private sector, volunteer and government organizations involved in drunk driving campaigns.

We hope all of you will support this suggestion for a national leadership group. After all, its major role may turn out to be to provide the mutual reinforcement necessary to keep up the pressure for a decade or more.

No matter what commitment any of us makes—individually or organizationally—I hope we remember: it's not the activity we engage in that represents accomplishment. The only real accomplishment is a dramatic, sustained reduction in deaths and injuries.

On behalf of the Insurance Information Institute and its member companies, I wish to thank the committee for this opportunity to appear and express our point of view.

Senator **Danforth**. Thank you, Mr. Clarke.

Mr. Reagan.

Mr. **Reagan**. Thank you, Mr. Chairman.

My name is James Reagan. I am senior vice president for the Government Employees Insurance Co. We at GEICO are pleased to see that the problem of drunk driving is being redefined as driving under the influence of alcohol and other drugs. Alcohol is the most widely abused drug in our society, and the tragic effects of alcohol-impaired driving are well known.

Unfortunately, the problem of driving under the influence of drugs other than alcohol is not so well known. Our attention has been focused on the general problems of misuse of drugs, but the relationship between the misuse of drugs and traffic accidents has only recently begun to receive public attention. We do not know enough yet about the magnitude of the problem.

The 1981 University of Michigan Highway Safety Research Institute study, Drugs and Highway Safety, cites research that conservatively estimates that 4 percent of all crashes are possibly caused by impairment by drugs other than alcohol. The study goes on to point out that a 4-percent involvement rate means an annual 2,000 fatalities, 80,000 serious injuries, and nearly three-quarters of a million crashes, and frankly, we think that is a very, very conservative number.

Realizing that drugs are a cause of traffic accidents is really just the first of many steps that need to be taken. There needs to be additional research on the effects of certain drugs and what effect they have on driving ability, research on what amount of a particular drug results in impairment, driver impairment, and much work needs to be done to develop meaningful and accurate tests to measure drug impairment.

We have developed extensive data on the effects of alcohol on driving ability as a cause of traffic accidents. We now need to compile similar information on a wide variety of drugs that also are a cause of the carnage on our highways, either alone or in conjunction with alcohol.

We at GEIGO are particularly concerned about the problem of alcohol as it relates to young drivers. I represent GEICO on the Impaired Driver Committee of the National Association of Independent Insurers, the NAII. According to NAII, a teenager is four times more likely to have an alcohol-related crash than any other driver, and it is not just teenage drivers who are being killed and maimed. Teenage passengers also show a high death rate.

In a recent survey of high school seniors in Arkansas, 75 percent admitted to drinking alcohol and driving on a regular basis. NAII estimates that 40 percent of teens have driven while high on marihuana. GEICO strongly supports the provisions of S. 1108 that encourage States to raise their minimum drinking age to 21. Raising the minimum drinking age to 21 is an extremely effective weapon in our fight to reduce the number of highway deaths and injuries. Each of you, I am sure, are familiar with these statistics.

We at GEICO have been working to reduce the problem of the impaired driver for some time, and I would like to relate to you some of the actions we consider to be particularly effective. Perhaps the most crucial element in keeping the impaired driver off the road is the support of the community.

As an insurance professional, I know that alcohol-related traffic accidents have been a serious problem for many, many years, but only in recent years has a strong outcry from the public demanding action become evident. More importantly, citizens themselves are working to see that proper actions are taken.

Every State should encourage local governments to bring all interested parties together in continuing the effort to solve this problem. GEICO participates in many community task forces. The impaired driver problem is a long-term problem, and we think sustained local community-based efforts are necessary and vital to long-term solutions.

We have been involved for 2 years in a program called Project Graduation in Montgomery County. This involves students, school officials, parents, governments, businesses, in an effort to make the school prom and graduation activities safe. Last year in Montgomery County there were no alcohol-related crashes connected with proms or graduations.

Of course, young people take the cues as to proper behavior from adults. We at GEICO maintain that driving under the influence is a matter of individual responsibility. Each individual has a responsibility not to drive after drinking, and to see that his friends do not do so either.

To emphasize personal responsibility when it comes to highway safety, we have prepared and distributed to our automobile policyholders a special brochure called Only You Can Solve The Problem." To further emphasize individual responsibility, we created a program called Project Leave In A Free Taxi, or LIFT.

Through LIFT, GEICO will reimburse any GEICO employee who pays cab fare to send an intoxicated person, including himself, home to avoid driving under the influence.

These are just some of the steps we have taken. We also support the provisions of the bill which will facilitate computerized recordkeeping. This will be a valuable tool to identify hazardous conditions, just as the National Driving Register is a valuable tool to provide information on the problem driver.

We appreciate the opportunity to comment on the bill. Thank you very much.

Senator **Danforth**. Thank you very much.

Each of you has been involved in education, public information, with respect to driving while intoxicated or under the influence of drugs. Do you have views as to what kinds of information programs are useful and what kinds are not useful, or are we mainly guessing and flying by the seat of our pants?

Mr. **Reagan**. Our committee, the Impaired Driver Committee, frankly, we wrestle with this problem all the time, what things are really going to be effective. Recently, over the past 2 years, we developed 2 movies to be shown to various groups, but essentially to be shown to the high school teenagers. One is called Just Along for the Ride, which is a movie about drinking, going to a party, going out, peer pressure, that sort of thing. The other is Danger Ahead: Marijuana on the Road, which is more of a documentary, and we have been showing these to various school groups, school authorities. The teachers will show them themselves. We think they are having a very good effect.

So, that is the specific thing we do. We try all sorts of educational programs, but we really feel that the trick is to try to get the message across to the young people. It is very easy to interest the citizens' groups and the PTA's, but getting the attention of the youngsters is the problem.

Mr. **Clarke**. We have communications and materials directed at different audiences, and our motion picture film, like the very excellent film put together by the National Association of Independent Insurers, is directed to what we might categorize as thought leaders and the younger group in order to encourage additional community actions as to what kinds of steps could alleviate the problem.

Our national advertising campaign also is directed to these groups, and the campaign did include a coupon, and this was placed in 16 thought leader publications, and to date we have had 12,000 coupons returned asking for additional information that will then direct them to the kinds of organizations that have very specific interest either as an activist group or as a legislative advocacy organization, presenting certain points of view.

Senator **Danforth**. Gentlemen, thank you both very much for being with us.

The next witness is Philip Haseltine.

STATEMENT OF PHILIP W. HASELTINE, CHAIRMAN, NATIONAL ASSOCIATION OF GOVERNORS' HIGHWAY SAFETY REPRESENTATIVES, ACCOMPANIED BY CHARLES CALDWELL, CHAIRMAN, COMMITTEE ON TRAFFIC RECORDS

Mr. Haseltine. Good morning, Mr. Chairman.

I am Phil Haseltine, chairman of the National Association of Governors' Highway Safety Representatives.

I would like to introduce to you today Charles Caldwell of the Kentucky highway safety office, who chairs our Traffic Records Committee.

We were to be joined by Larry Karsten, who chairs our Committee on Drinking, Other Drugs, and Driving. Mr. Karsten is also our vice chairman. He is busily working with the Colorado Legislature today hopefully to get some legislation through that would qualify that State for section 408 incentive funding.

Before going to title II of S. 1108, I want to comment briefly on section 107 of title I, the child passenger safety seat section. As we speak, as we have heard this morning, 40 States have laws on the books or laws waiting to be signed by their Governors requiring young children to be protected in motor vehicles. Since 1978, when Tennessee first passed such a law, Federal 402 dollars have helped States in educating the public in setting the stage for the passage of laws in these 39 other jurisdictions.

The past 5 years have shown us that as in the issue of drunk driving, there is substantial probability that this issue of child passenger safety will be embraced by increasing numbers of citizens who will be educated and progress from the grassroots up. This will happen only if we look to the long term and support communities in their own individual efforts.

Highway safety managers have differing needs and difficulties, so it is preferable to build in as much flexibility as possible in any Federal grant program. This is especially true for the development and enforcement of child restraint programs, because so much of each program's success depends on local acceptance and community education, and local needs and existing resources vary enormously. In crafting the final version of this bill during markup, Mr. Chairman, we hope that you will take into account the need for that type of flexibility among the States.

We suggest a few changes to the bill that we believe would improve this section. The bill currently sets criteria for State law protecting children under age 5 or less than 40 pounds. We feel that a criteria of under 40 inches in height would also be a good criteria and should be approved. At least one State has such a law right now.

We believe children over age 1 seated in the rear seat ought to be allowed to use lap belts instead of a child safety seat. We believe that the moneys granted to a State under this bill could be well spent on safety belt education for children.

In addition to enforcement of the law itself, we suggest the percentage of the grant be raised to 20 percent of the State's 402 authorization, and that the total authorization, currently $30 million, as drafted in the bill, be reduced to $20 million based on current 402 funding levels.

In general, funds obtained by States under this program should be coupled with ongoing safety belt enforcement and education efforts in order to encourage the natural transition from child seat use to child use of safety belts and ultimately adult safety belt usage.

Title II, the Driving Under the Influence section: Our members have worked for years with other highway safety leaders and activists toward solving the problem of the drinking driver. The 402 program again has been instrumental in building a foundation and a structure within each State. Many progressive activities sponsored by citizen, victim, and volunteer groups can best take place when that structure occurs. Although death and injury figures fluctuate annually due to a wide spectrum of factors, the recent efforts to combat drunk driving are one of the reasons we saw 1982 highway traffic fatalities at their lowest levels in years.

We also need to recognize that the criminal justice system alone cannot eliminate the drunk-driving problem. We need to change basic societal attitudes toward excessive alcohol consumption in general, and to do that is going to require the combined efforts of a variety of disciplines, including highway safety professionals, and a comprehensive prevention program strategy. Such efforts need to be initiated in addition to those undertaken through the criminal justice system.

We expect to be and have been faced with some extremely complicated enforcement issues in the field of drugs and driving, as well as the enormous task of determining the effect on driving simply of drugs sold over the counter, which continue to be sold in increasingly potent forms. There is a significant public education effort that must be undertaken if we expect to have any effect on the driving public. Obviously, mixing alcohol and drugs of any type and driving is likely to be disastrous for the driver and/or victim. Many States already take into account the issue of other drugs. We support the addition of drugged driving as a possible supplemental criteria for the 408 incentive program.

Next, briefly, I would like Mr. Caldwell to comment on the computerization of traffic records component of the bill, and we shall be through briefly, Mr. Chairman.

Mr. CALDWELL. Mr. Chairman, thank you very much for the opportunity to present and discuss this issue concerning the computerization of traffic record systems in the bill. I might preface this by indicating that I have been a practitioner within the traffic records field for many years, and appear here as a user as opposed to a systems designer or someone who professes to know all there is to know about computers.

We believe the intent of this section of S. 1108 is to provide additional funds so that States might further upgrade and update State traffic record systems through the use of computers for the purpose of creating a more uniform recordkeeping system. These efforts to improve recordkeeping systems should be designed especially combat drunk and drugged driving.

We strongly support upgrading the NDR as directed in Public Law 97-364, but recognize it as an interstate driver licensing pointer system. Driver record needs within any individual State go far beyond what we could reasonably expect from the NDR. A major aim of all highway safety recordkeeping systems should be to integrate all information that will support countermeasure activities, and we see the NDR as one product of those attempts to integrate and consolidate systems.

The NAGHSR Committee on Traffic Records undertook an informal survey of its members, State highway officials, several professionals, and other people within the records and highway safety community. Several useful ideas were suggested, but we feel that two in particular need special attention if any progress is to be made.

The existing State highway reference systems for traffic accident reporting or enforcement activities need to be upgraded to include an accurate site registration system to identify locations on both State and locally maintained roads and streets. Current reference systems typically are automated in most States, and typically are automated for the State-maintained file only, not the locally maintained file.

If I may provide you a very brief scenario, at the scene of an accident, whether it be law enforcement, emergency medical response, fire response, what have you, ultimately the question is asked, where is the accident? So, we are trying to discuss with this recordkeeping system a site registration that will not only alleviate and help evaluate accident analysis, traffic accident analysis, but will in fact also pinpoint the DUI locations.

Virtually every State has computer capability for highway safety referencing and recordkeeping. Each is developed in varying degrees. The Michigan Accident Locater Index, or MALI, is probably the foremost example of a system that allows for uniform identification in the States. However, even in Michigan, much of the software programing is outdated and cumbersome to use: A number of additional States have such systems under development.

We feel a logical tie-in for this would be to link the State traffic accident files with enforcement files, and further, with adjudication files. One such system is New York's traffic safety, law enforcement, and disposition program, where they utilize a prenumbered traffic ticket designed and purchased and distributed free of charge to the police agencies by the Department of Motor Vehicles.

The department can track each ticket issued in the 10 counties where this system is operational. This program provides the State a unique opportunity to couple the quality of DWI arrest and adjudication with the law enforcement deployment patterns, traffic crash experience, and thus this permits the application of a true systems approach to the drunk-driving problem and the traffic accident problem in total.

We feel that by providing for the moving hazardous violation citation tracking such as this project in New York, that adjudication procedures can be evaluated for original charges, convictions as charged, amended charges, dismissals and, of course, evaluation can then be made as far as court districts or any various regional jurisdictions within the individual State.

Each and every action taken by a State to improve recordkeeping and data bases can contribute significantly to streamlining enforcement procedures and ultimately to reducing fatalities and injuries.

Thank you, sir.

Senator **Danforth**. Gentlemen, thank you very much. The idea in this particular bill with respect to records is as follows. It is my understanding that police departments through the use of computers can predict the time and place of any kind of law violation. That is to say that a police department can predict that, say, at the hour of 10 p.m. on Friday nights in a certain location, a certain part of the city, the chances of a burglary taking place are greater than they are on another night or in another season.

And if it is possible for a police department to predict when and where crimes are going to take place through the use of computers, it is then possible for the police department to deploy personnel in a time-specific and place-specific way. The thought was that this can and probably is being done now by law enforcement departments. That is to say that it is possible to predict that at a given time and a given place, there will be a greater number of drunks on the road.

The police departments already do that on New Year's Eve. They, as pointed out earlier, in Delaware, as I understand it, they have a special emphasis between the hours of 12 and 2 or 11 and 1, when the bars are closing, in putting out police officers.

My guess is that it is possible to predict that at certain places it is more likely that people will be driving under the influence. For example, if there is a music concert in the summer, attended by a lot of younger people, it is possible to predict that there are going to be a fair number of them when they leave that concert who are driving under the influence or while intoxicated, and if that is so, then deployment should be maximized at that time and place.

Therefore, the theory of this bill was to make funds available for police departments to carry on such a computerized program. Let me ask you the question. Is this kind of program now being carried on? Are additional funds useful for this kind of program? Is this kind of program useful in maximizing the number of stops by police officers of people who have been drinking?

Mr. **Caldwell**. The system is in place with varying degrees of sophistication throughout the country. Typically, what has happened is, an adjudication file is in place for the activity of tracking the citation for moving, hazardous violations, but that file cannot talk to the accident file, so there is no cross-reference between where the citations are being issued compared to where the accidents are occurring.

Several of these systems, as you mentioned, are in place individually. Our biggest concern right now and probably the area in which we need the most progress is to get these files in a system so they can talk to each other, so that we can in fact overlay the deployment of enforcement with the citation issuance, et cetera.

Senator **Danforth**. My knowledge of computers is virtually zero, but it is my understanding that this is a promising area, and it is an area where the availability of funds could really make a difference in maximizing the number of stops of people who have been drinking while they are driving. Is that a correct statement?

Mr. **Caldwell**. Yes, sir.

Senator **Danforth**. Is this a significant part of the bill?

Mr. **Caldwell**. Yes, sir, it is, certainly.

Mr. HASELTINE. From my perspective in the State of Michigan, and as Mr. Caldwell mentioned, we have one of the better systems, and one of the only locater systems, accident locater systems which includes all roads in the State. A number of States have them for State trunk lines or Federal aid roads only, but not for local and city streets, and we provide in our State right now, and again, it is one of the few examples, every law enforcement agency and every traffic engineering agency in the State periodically, quarterly, every 3 months, printouts of their high accident locations.

And yet I will walk into many, many police departments and sheriffs' departments in the State of Michigan, and they are tracking their accidents, they are throwing out the computer printouts and tracking their accidents by old pin maps, because the old, cumbersome design of the system that we have just does not meet their needs.

So, the potential is there. The need is there. It is the only cost-efficient way to deploy law enforcement resources, and even in the States that have the best systems right now, there are significant needs for upgrading.

Senator DANFORTH. Gentlemen, thank you very much.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF GOVERNORS' HIGHWAY SAFETY REPRESENTATIVES

Mr. Chairman and members of the Committee, my name is Philip W. Haseltine, Chairman of the National Association of Governors' Highway Safety Representatives (NAGHSR). I would like to introduce the other members of our panel, both chairmen of NAGHSR committees. Larry Karsten, Deputy Director of the Colorado Highway Safety Office and Vice Chairman of NAGHSR, chairs our Drinking, Other Drugs and Driving Committee. Charles Caldwell of the Kentucky Highway Safety Office, chairs our Traffic Records Committee. Both Mr. Karsten and Mr. Caldwell will present different sections of our Association testimony today.

The Association, through the guidance of the entire membership and its Executive Board, operates in the area of highway safety on behalf of the States, Territories, and the District of Columbia, with the Congress and the Executive Branch. By memorandum of agreement, the NAGHSR is the highway safety support affiliate of the National Governors' Association; acts as a central dissemination point for information concerning legislative and administrative activity affecting the States' highway safety programs; as a clarification center of technical information; and for any other related task within the scope of its Articles of Incorporation (which limits the Association's activities to the national highway safety program.)

Before addressing Title II of S. 1108, I want to comment briefly on Section 107 of Title I, Child Passenger Safety Seats.

It is most gratifying to watch the "domino" effect of mandatory child restraint State legislative activity in this country today. As we speak, 40 States either have laws on the books or waiting to be signed by their governors that require young children to be protected while riding in motor vehicles. State legislatures have considered this issue to be one of the most prominent on their schedules in the past few years.

Since 1978, when the first State (Tennessee) passed such a law, and when the Surface Transportation Act of 1978 required States to spend at least 2 percent a year of their (Section 402) State and Community HIghway Safety Program funds on promoting safety belt use, the federal 402 dollars have helped States in educating the public and setting the stage for passage of State laws. These past five years have shown us that, as in the issue of drunk driving, there is substantial probability that this issue of child passenger safety will be embraced by increasing numbers of citizens who will be educated and progress from the grassroots up. This will happen only if we look to the long-term and support communities in their own individual efforts.

State highway safety managers have differing needs and difficulties, so it is preferable to build in as much flexibility as possible in any federal grant program. This is especially true for development and enforcement of child restraint programs because so much of each program's success depends upon local acceptance and community education, and local needs and exisitng resources vary enormously. In crafting this bill, we hope you will take into account the need for flexibility for the States. But, we also believe we will need clarification of Congressional intent on many issues in the bill as it makes its way through Congress and through the rulemaking process associated with the incentive grant program.

Listed below are a few suggested changes that would, in our view, improve this section of S. 1108. We will be glad to discuss them in more detail with you and your staff:

The bill currently sets criteria for a State law that requires protection for children under five years or less than 40 pounds. We feel that a law could also require height (under 40") as one possible criteria. (One State—Kentucky—currently has such a law. Members of the enforcement community suggested to Kentucky State legislators writing the bill that it would be more effective for them to observe height, rather than weight or age, in their attempts to enforce the law.)

We also believe that children over one year in age, seated in the rear, should be allowed to use safety belts instead of a child safety seat. Both fatality data and several respected highway safety research organizations suggest that lap belts do afford adequate protection in the rear seat for youngsters over age one.

Monies granted to a State under this bill could be well-spent on safety belt education for children, in addition to enforcement of the law itself.

The bill would allow 10 percent of a State's 402 apportionment, in a one time grant, and authorizes $30 million for the program. We suggest that the percentage of the grant be raised to 20 percent, and the authorization lowered to $20 million.

The date for issuance of the Notice of Proposed Rulemaking (NPRM) is July 1, 1983. This date will need to be changed.

In general, funds obtained by the States under this program should be coupled with ongoing belt enforcement and education efforts, in order to encourage the natural transition from child restraint use to child use of safety belts, and ultimately adult safety belt use.

DRIVING WHILE UNDER THE INFLUENCE

Drunk and drugged driving

Members of NAGHSR have worked for years in tandem with other highway safety leaders and activities to direct federal and State resources toward solving the problem of the drinking driver and the resulting devastation accompanying the problem. Recent progress on this most major highway safety problem has been due in large part to a growing public awareness and willingness to take action. The 402 program has been instrumental in building a foundation and a structure in each State within which many progressive activities fostered by citizen, victim and volunteer groups can take place. There is an unprecedented opportunity for all highway safety players to build on and sustain their efforts and to assure future success in lowering fatality and injury statistics. Although death and injury figures fluctuate annually due to a wide spectrum of factors, recent efforts to combat drunk driving are one of the reasons we saw 1982 highway fatalities at their lowest in many years.

As the economy improves, fatality reductions achieved over the last few years could begin to rise. It is time now to augment all highway safety efforts at all levels—federal, state and community.

We need also to recognize that the criminal justice system alone cannot eliminate the drunk driving problem. We need to change basic societal attitudes toward excessive alcohol consumption in general. To do that will require the combined efforts of a variety of disciplines including highway safety professionals and a comprehensive prevention program strategy. We must understand that such change will not be easy, nor will it come rapidly. Such efforts need to be initiated in addition to those undertaken through the criminal justice system.

NAGHSR's Committee on Drinking, Other Drugs and Driving, formed in the Fall of 1982, has not formally addressed the issue of drugs and driving. All our members recognize it as a major problem and have discussed conducting a day-long roundtable discussion and seminar with other key experts in both the highway safety and drug abuse fields. We hope to schedule this session shortly, and will also discuss the issue on our September 1983 annual meeting program.

We expect to be (and have been) faced with some extremely complicated enforcement issues in this field, as well as the enormous task of determining the effect on driving simply of drugs sold over-the-counter, which continue to be sold in increasingly potent forms. There is a significant public education effort that must be undertaken if we expect to have any effect on the driving public. And obviously, mixing alcohol and drugs of any kind and driving is likely to be disastrous for any driver and/or victim.

Many States already take into account the issue of other drugs besides alcohol in their drunk driving statutes. Statutory definitions of such terms as "chemical test" and intoxicated" have been altered to mean the presence of controlled substances as well as alcohol.

NAGHSR supports the addition of "drugged driving" to the possible supplemental criteria a State law might contain to receive an incentive grant under P.L. 97-364.

Computerization of traffic record systems

We believe the intent of this section of S. 1108 is to provide additional funds so that States might further upgrade and update State traffic records systems through use of computers, for the purpose of creating a more uniform Statewide recordkeeping system for highway safety enforcement efforts. It is our understanding that these efforts to improve recordkeeping systems should be designed especially to combat drunk and drugged driving.

NAGHSR's Committee on Traffic Records undertook an informal survey of its members, other State highway safety officials, and several professionals in the traffic records/highway safety community. All were asked their views of the needs in this field, and specifically how additional federal funds for this purpose could be best used by the States to further enhance recordkeeping systems used for drunk driving enforcement efforts. Several useful ideas were suggested, but we think one area in particular needs special attention if progress is to be made.

The existing State highway reference systems for traffic accident reporting and/or enforcement activities need to be upgraded to include an accurate site registration system which will identify locations on both State and locally-maintained roads and streets. Current reference systems typically are automated for the State-maintained system only, if, in fact, the State has automated reference files. Without accurate location identification procedures, most countermeasures are severely reduced in effectiveness. In particular, it is impossible to ensure that law enforcement officers are deployed in the proper locations, on the right days of the week, and at the right time of day, in the absence of alcohol-related crash and arrest data. Such situations not only waste scarce law enforcement resources but do little to reduce drinking-related crashes.

Although virtually every State has computer capability for highway safety referencing and recordkeeping, each is developed to varying degrees. Some States have Statewide highway reference systems currently in operation. The Michigan Accident Locater Index, or M.A.L.I., is the foremost example of a system that allows for uniform identification of any location on any road in the State. Even in Michigan, much of the software programming is outdated and cumbersome to use. Software upgrading would enhance the usability and performance of the indexing system. While few, if any other States have similar systems in place, Alabama and Arizona are examples of States with fairly comprehensive accident location systems. A number of additional States have such systems under development.

We know that State needs for traffic safety recordkeeping improvement and other data base needs in drunk driving are great. We strongly support upgrading the National Driver Register, as directed in P.L. 97-364, but recognize that system as an interstate driver-licensing pointer system. Driver record needs within any individual State go far beyond what we could reasonably expect from the NDR. A major aim of all highway safety recordkeeping systems (and there are several within each State) should be to integrate all information that will support countermeasure activities, and we see the NDR as only one product of those attempts to integrate and consolidate systems information.

It has also been suggested that another productive use of any additional monies might be to create a capability to link State accident files with enforcement files, and further with adjudication files. (In computer processing talk, this means files "talk to each other.") One such exemplary system is New York's Traffic Safety Law Enforcement and Disposition (TSLED) Program. TSLED uses a pre-numbered traffic ticket, designed, purchased and distributed free of charge to police agencies by the Department of Motor Vehicles (DMV). The Department can track each ticket issued in the ten counties where TSLED is operational, from the initial printing of the ticket to assignment to a police agency, through issuance and ultimate disposition in the courts. TSLED, begun in February 1980, has proven successful in compiling statistical data on speeding and drinking driving violations which ultimately has helped the State in its total drunk driving enforcement and adjudication efforts. This program provides the State a unique opportunity to couple the quality of DWI arrests and adjudication with law enforcement deployment patterns and traffic crash experience, thus permitting the application of a true systems approach to the drunk driving problem. Similar systems need to be implemented throughout the country. It is not usually the case that traffic safety files are able to talk to each other in this way, and additional monies could help to create traffic law enforcement and adjudication data bases that may be further integrated with the traffic accident files.

Each and every action taken by a State to improve recordkeeping and data bases can contribute significantly to streamlining enforcement procedures, and ultimately to reducing fatalities and injuries.

In closing, we want to emphasize, Mr. Chairman and other members of the Subcommittee, two important points about overall highway safety funding:

The basic 402 State and Community Highway Safety Grant Program, funded in fiscal year 1983 at $95 million, is designed to approach highway safety problem-solving in a comprehensive, community-based fashion. We believe incentives to accomplish specific tasks can successfully support ongoing 402 project activities, which strive to include all levels of the society and community—State and local governments, citizens, enforcement and emergency medical personnel, the media, State recordkeeping systems, the public health community, and so on. But we also believe many of these tasks cna be more effectively accomplished through the existing 402 framework, which provides maximum flexibility to each State to fashion an overall highway safety program, emphasizing certain key areas that produce the greatest payoff in the behavorial highway safety area. Currently, drunk driving and occupant protection—particularly child passenger safety—are such emphasis areas. Our Association testified last month before both House and Senate Appropriations Transportation Subcommittees in favor of a modest increase (from $95 million to $112.5 million) in the base 402 program for fiscal year 1984.

The 408 drunk driving incentive grant law (P.L. 97-364) requires the States to meet a specific set of prescriptive standards, each of which has merit on its own. NAGHSR supported passage of an incentive grant law last year, and applauded you, Senator Danforth, and other Congressional sponsors for your leadership in securing passage of the legislation. We worked closely with the National Highway Traffic Safety Administration, at both public hearings and through the formal comment periods, in fashioning the final rule that spells out some details of the bill. We know that it is too early to know final results for fiscal year 1983 as to how many and which States qualify for these funds, but we do know that most, if not all, of the most populous States, many with excellent alcohol safety programs, will not qualify this year, and may never qualify. Although we are not able at this time to suggest to you a set of possible technical changes in the law that might provide a more equitable balance in this important program, we would like to reserve the opportunity to discuss such possible changes with you and your staff in a few months, when we have more data. We think it is vital to the success of this program (Section 408) and to the entire highway safety movement that this incentive grant program truly motivate the States to do a better job, no matter how much progress has or has not already been made.

This is a critical time for the issue of drunk driving. As an issue that has just now begun to penetrate the American psyche, it could easily and soon be relegated to the middle, if not the back burner of the society's consciousness if the majority of State and community-based programs are not well enough funded. Approximately half of the NHTSA 402 program funds in fiscal year 1983 are spent on all alcohol countermeasures ($49.5 million); on the average, that figure represents about 1½ day's-worth of federal gas tax monies to be spent this year ($12 billion). Surely, this national epidemic that takes too many lives and debilitates thousands every day—and costs the society fortunes in economic burdens—should have every currently authorized penny at work finding remedies and institutionalizing behavioral change in our society.

This task is achievable. It takes not only money, but tenacity, patience, and hard work. We have lots of the latter three, and hope more States and communities will be able to make use of the former in the Section 408 and other highway safety programs.

Senator DANFORTH. Mr. Protos and Mr. Baxter. Mr. Protos.

STATEMENTS OF MATTHEW PROTOS, PRESIDENT, NATIONAL LICENSED BEVERAGE ASSOCIATION; AND TERRY BAXTER, CHAIRMAN, HIGHWAY SAFETY ADVISORY PANEL, HIGHWAY USERS FEDERATION, ACCOMPANIED BY ROBERT CALVIN, MANAGER, HIGHWAY SAFETY PROGRAMS

Mr. PROTOS. Mr. Chairman, my name is Matthew Protos. I am here today speaking as president of the National Licensed Beverage Association on S. 1108. I appreciate the opportunity to present our views at this time.

The National Licensed Beverage Association is a nonprofit trade association with headquarters in Alexandria, Va. We offer services in public affairs, education, and research to our more than 30,000 members who operate on premise licensed beverage retail establishments across the country, such as cocktail lounges, restaurants, and taverns.

I am here today to support the general concept of this proposed legislation. The members of our association have a major concern about the drunk driving problems on our highways. A poster which I have displayed here today is presently being sent free to our more than 30,000 members to display for customers. As you can see, it carries the message, "As your host, we welcome you and thank you for your patronage. As concerned citizens, we encourage you to enjoy our beverages in moderation and to drive responsibly." It also contains the effective Know Your Limits chart.

Not only do we, as well as all other Americans, have the health and well-being of our families and loved ones threatened by drunk driving on the highways, but in many cases our source of livelihood has been jeopardized by misguided attempts to resolve the drunk-driving issue. This is not to say that we do not encourage and support well-researched legislative programs to reduce drunk driving. We must, however, challenge proposals that cannot withstand the test of effective, statistically proven deterrence to drunk driving.

Such is the case under title II, paragraph (a) of this proposed legislation, the raising of the legal drinking age in every State to 21 years of age. Numerous studies have been made about alcohol-related traffic fatalities in States that have raised the legal drinking age in comparison to States that have maintained lower drinking ages of from 18 to 20 years. As stated in Death and Legal Drinking Age, a tristate study published by the Blaney Institute in April, 1983, in Madison, Wis., and I quote:

> Despite the fact that since 1975 21 States have raised the legal drinking ages, scientifically reliable studies of highway safety impact on those changes are few and generally inconsistent.
>
> In Michigan, one study found decreases in under age highway crash involvement ranging from 17.7 percent to 30.7 percent, while another report indicated a 41 percent reduction among 18 to 20-year-olds after the age was raised to 21.

The Blaney Institute report continues:

> In Maine, one study found no significant shift in serious crashes, while a second study showed decreases of 18.6 percent for 18-year-olds and 13.9 percent for 19-year-olds, and a third study found a 14 percent aggregate reduction for 18 to 19-year-olds after the age was raised to 20. Another study showed a 17-percent increase in fatal ratios for 18-year-olds in Montana after the age was raised to 19.

Because of inconsistency in the findings of these various studies, the Blaney Institute conducted a program which examined and compared recent crash experience among 18- to 20-year-old drivers in Wisconsin, which has retained 18 as the legal drinking age for all alcohol beverages since 1972, with those observed and attributed by others to raising the legal age in Michigan and Illinois to determine whether evidence could be found to support the highway safety rationale for restricting or denying the drinking privileges for young adults.

The methods used in analyzing the data collected appears in the Blaney Institute's report, which is attached as a part of my testimony. The significant conclusion that is brought out as a result of the Blaney Institute's findings is that raising the legal drinking age has no greater impact on 18- to 20-year-old drivers' highway crash involvement in Michigan and Illinois than in not changing the legal drinking age had on crashes involving 18- to 20-year-old drivers in Wisconsin.

These results are entirely consistent with those of earlier research entitled The Legal Drinking Age, a State study conducted by the National Highway Traffic Safety Administration in 1975, and more recent analysis of data for 22 States which have retained different drinking ages over the time which found no significant difference in 18- to 20-year-old drivers' fatal crash involvement attributable to differences in States' legal drinking ages.

Probably the most important conclusion supported by the Blaney Institute study is that the change in highway fatalities in Wisconsin and the changes in Michigan and Illinois are not due to chance fluctuation or the changing legal drinking age, but to changes in other influences on younger drivers' drinking and driving behaviors.

Upon examination of the figures published by the Department of Transportation Federal Highway Administration, we find a significant decrease in overall highway fatalities in the years immediately following lowering the maximum speed limit to 55 miles per hour.

Another variable taken from these statistics indicates that more stringent enforcement of existing laws as well as public awareness campaigns tend to result in reducing highway fatalities, whereas the result of raising the legal drinking age is inconclusive as one examines these figures on a State-by-State basis.

As I stated earlier in my testimony, the National Licensed Beverage Association supports the general concept of this proposed legislation and the provisions that States meet certain criteria to qualify for the Federal moneys. However, we believe that there are more effective programs needed at the State level to reduce drunk-driving problems that could be used as a basic criteria for this proposed legislation rather than raising the minimum drinking age to 21.

One such program we would recommend to this committee is licensee employee education seminars conducted by qualified industry trade associations. Similar programs are already in operation relating to State health laws and regulations for restaurant owners.

We would also suggest that financial responsibility be a prerequisite to obtaining a license to sell alcoholic beverages. This would help exclude marginal operators from our industry who disregard existing laws involving the serving of alcoholic beverages to underage persons as a means of overcoming their financial difficulties.

Both of these recommended proposals are needed within our industry. They have the potential of being a greater deterrent to the drunk-driving problem than the inconsistency we find in increasing the minimum drinking age.

Thank you for the opportunity to present our views to this committee. Thank you.

[The attachment referred to follows:]

ISSUE BRIEFS

THE BLANEY INSTITUTE
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CREATIVE PUBLIC POLICY ALTERNATIVES #7

DEATH and the LEGAL DRINKING AGE: A Tri-State Study

Changes in highway crash involvement among drivers affected by raising the legal drinking age in Michigan and Illinois were compared with crash experiences among the same driver age group in Wisconsin, which retained 18 as the legal drinking age throughout the study period. In each of the states studied, crashes involving 18-20 year-old drivers decreased relative to those involving the next older age group, 21-24, during the study period. Reductions in alcohol-related highway crashes involving 18-20 year-old Wisconsin drivers (14.8%-28.6%) exceeded those for drivers of the same age subsequent to raising the age in Michigan (17.7%) and Illinois (8.8%).

Chances for reductions of this magnitude occuring without intervention range from .05 (5 in 100) to .001 (1 in 1,000), supporting the conclusion that the change in Wisconsin, and the changes in Michigan and Illinois are not due to chance fluctuation, or changing the legal drinking age, but to changes in other influences on younger drivers' drinking and driving behaviors.

Although there clearly is a compelling public purpose to be served by reducing the incidence of alcohol-related highway crashes among young people, the results of this study do not support the proposition that rescinding the legal drinking priveleges of 18, 19, or 20 year-old adults is an appropriate or effective mechanism for accomplishing that public purpose.

Madison, Wisconsin, April 1983

NOTE: Nothing written here is to be construed as necessarily reflecting the views of the Blaney Institute or as an attempt to aid or hinder the passage of any bill before the Legislature.

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FINDINGS

Table 1

RESULTS OF ANALYSES OF WISCONSIN DATA

	Projected 80/81	Actual 80/81	Chi-Square Value	Level of Significance	Percent Change
Drivers in Fatal Crashes					
18-20	.083	-.122	65.87	.001	-20.5%
21-24	.093	.117	.17	Not Significant	2.4%
Had Been Drinking Crashes					
18-20	.041	-.107	32.69	.001	-14.8%
21-24	.06	.012	5.38	.05	-8.8%
Alcohol-Impaired Driver Deaths					
18-20	.10	-.186	4.12	.05	-28.6%
21-24	.06	.187	.51	Not Significant	10.7%
Non-Impaired Driver Deaths					
18-20	.076	.038	.02	Not Significant	- 3.8%
21-24	.263	.263	.00	Not Significant	0.0%

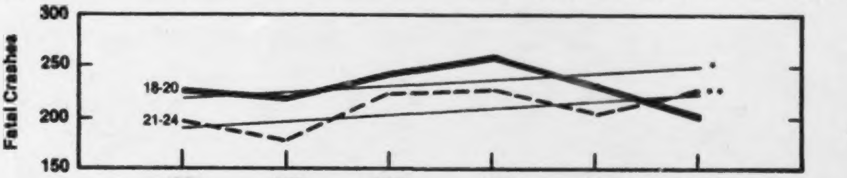
Table 1 shows the results of various analyses of the four crash statistics (Fatal Crashes, Had-Been-Drinking Crashes, Alcohol-Impaired Driver Deaths, Non-Impaired Driver Deaths) for drivers in the two age groups. Percentages in the last column indicate the difference between actual rates per thousand licensed drivers for the most significant change year, 1981, and the rates expected based on analyses of the 1976-80 data.

As Table 1 shows, alcohol-related crashes involving the younger driver age group decreased dramatically in 1981, while non-alcohol related crashes (Non-Impaired Driver Deaths) were only slightly lower than predicted. Overall reductions in driver deaths and fatal crashes were too small to account for the significant decrease in alcohol-related crashes among 18-20 year-old drivers. The contrast between these sizeable reductions, the much smaller decrease in Had-Been-Drinking Crashes and the insignificant increase in Alcohol-Impaired Driver Deaths among 21-24 year-old drivers supports the conclusion that there was a significant change in younger drivers' drinking and driving behaviors in Wisconsin in 1980-81.

Table 2 shows the crash totals for the two age groups of drivers during the six-year period, 1976-81, along with the 1981 figures projected by linear regression analyses. Note in the line for 1981 how the alcohol-related crashes decreased for drivers aged 18-20, in contrast to those involving the next older driver age group.

Figure 1 illustrates the 1980-81 reduction in fatal crashes among 18-20 year-olds and increased fatal crashes involving 21-24 year-old drivers in the same year. Note the significant difference in predicted and actual crash levels for younger drivers and the insignificant difference for the older driver age group in 1981.

Figure 1. DRIVERS IN FATAL CRASHES, WISCONSIN: 1976-1981



	1976	1977	1978	1979	1980	1981	*Predicted*
18-20	225	218	240	257	230	202	**249*
21-24	193	178	223	226	205	229	***224*

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INTRODUCTION

Should eighteen, nineteen, or twenty-year old adults be denied the legal right to sell, purchase, possess, or consume alcoholic beverages? Responding to scattered evidence that lowering the legal drinking age in 1971-73 may have resulted in increased alcohol-related highway crashes among newly enfranchised legal drinkers[1],a number of states have subsequently rescinded the drinking priveleges of 18, 19, and 20 year-old adults. Federal policy-makers and legislators in lower legal drinking age states look to the experiences of the age-change states to assist in determining whether there is, or is not, a compelling public safety interest in denying the right to drink alcohol beverages to any group of legal adults, solely on the basis of their age.

Despite the fact that, since 1975, twenty-one states have raised their legal drinking ages, scientifically reliable studies of the highway safety impact of those changes are few and generally inconsistent. In Michigan, Wagenaar found decreases in underage highway crash involvement ranging from 17.7% to 30.7%[2]), and Williams reported a 41% reduction among 18-20 year-olds after the age was raised to 21[3]. Scholarly observers disagree on the size and significance of post-change crash involvement in Maine, where Wagenaar found no significant shift in serious crashes[2], Klein reported decreases of 18.6% for 18 year-olds and 13.9% for 19 year-olds[4]; and Williams found a 14% aggregate reduction for 18-19 year-olds after the age was raised to 20[3].

Where Williams found a 10% decrease in night-time to day-time fatal crash ratios[3], Massachusetts authorities report a 23% increase in fatal crashes involving 18-19 year-old drivers subsequent to raising the minimum legal drinking age to 20[5]. Williams also reported a 17% increase in fatal ratios for 18 year-olds in Montana after the age was raised to 19[3], and Maxwell found an 8.8% decrease in 19-20 year-old Illinois drivers' highway crash involvement after that state raised the legal drinking age from 19 to 20[6].

In the absence of conclusively consistent findings among the available drinking age impact studies, it was decided to examine and compare recent crash experience among 18-20 year-old drivers in Wisconsin, which has retained 18 as the legal drinking age for all alcoholic beverages since 1972, with those observed and attributed by others to raising the legal drinking age in Michigan and Illinois, to determine whether evidence could be found to support the highway safety rationale for restricting or denying the drinking priveleges of young adults.

METHODS

The data analyzed consisted of the number of driver deaths tested in Wisconsin's fatal accident blood testing program which were found to have blood alcohol levels less that .05% (Non-Impaired Driver Deaths), and .05% or greater (Impaired Driver Deaths), the number of drivers involved in fatal crashes (Fatal Crashes), and the number of all highway crashes in which police reported that the driver had been drinking and was impaired by alcohol (Had-Been-Drinking) for 18 through 24 year-old drivers in the years 1976-1981. Crash rates per thousand licensed drivers were calculated for each of the age groups, 18-20 and 21-24, for each of the six years studied.

The resulting data sets were subjected to partitioned chi-square analyses[7] to identify significance levels of annual changes in values of each variable for each driver age group. Linear least-squares regressions[8] were used to analyze and predict rates and frequencies for item/years identified as significant by partition analyses. Chi-squares were calculated for predicted-versus-actual data values in each significant change year. In brief, these analyses assessed the degree to which actual crash experience differed from that expected on the basis of previous trends.

Table 2

DRIVERS IN WISCONSIN HIGHWAY CRASHES, 1976-1981

AGE 18-20

	Drivers In Fatal Crashes	Had-Been-Drinking Crashes	Alcohol-Impaired Driver Deaths	Non-Impaired Driver Deaths	
1976	225	2,090	54	20	
1977	218	2,037	67	27	
1978	240	2,113	44	24	
1979	257	2,599	74	26	
1980	230	2,837	70	26	
1981	202	2,531	57	27	
1981	*249*	*2,952*	*77*	*28*	*Predicted*

AGE 21-24

	Drivers In Fatal Crashes	Had-Been-Drinking Crashes	Alcohol-Impaired Driver Deaths	Non-Impaired Driver Deaths	
1976	193	1,893	47	15	
1977	178	1,893	49	18	
1978	223	2,130	60	27	
1979	226	2,407	64	20	
1980	205	2,439	75	19	
1981	229	2,469	89	24	
1981	*224*	*2,634*	*81*	*24*	*Predicted*

Underlined figures are statistically significant.

*Written for the Blaney Institute by **Michael M. Birkley**, author of **Youth, Alcohol, and the Law** and **Alcoholic Beverage Abuse and Control: Issues for Public Discussion** published by the Wisconsin Department of Health and Social Services in 1978 and 1979; and, "The Effects of Lowering the Legal Drinking Age on 18 through 20 year-old Wisconsin Drivers", with Michael A. Quirke, in **Grassroots**, Oct. 1979.*

Table 3

**REDUCED HIGHWAY CRASH INVOLVEMENT
WISCONSIN, MICHIGAN, ILLINOIS, 1978-81**

State	Statistic	Change Years	% Chang
WISCONSIN			
	18-20 year-olds, Drivers in Fatal Crashes,	1980-81	- 20.5%
	18-20 year olds, Alcohol-Impaired Driver Deaths	1980-81	- 28.6%
MICHIGAN			
	18-20 year-olds, Three-factor Surrogate Crashes,	1978-79	- 17.7%
ILLINOIS			
	19-20 year olds, Three-factor Surrogate Crashes,	1979-80	- 8.8%

Table 3 compares changes in underage drivers' crash statistics observed after raising the legal drinking age in Michigan by Wagenaar[2] and in Illinois by Maxwell[6], with those involving drivers of the same age in Wisconsin in 1980-81. The values shown in Table 3 are the difference in actual versus predicted crash levels in significant change years. Figures for Michigan and Illinois reflect changes in three-factor surrogate crashes (night-time, single vehicle crashes involving male drivers) resulting from Box-Jenkins Time Series analyses. (See Wagenaar[2] for detailed discussion of data and methodology.) Wisconsin figures are for changes in fatal crashes and driver deaths. The data selected for comparison in Table 3 are those least likely to be distorted by influence other than changes in real occurances. Each item bears a direct relationship to alcohol-involvement and reflects the degree of change in alcohol-related crashes among the populations studied.

As shown in Table 3, alcohol-related crash involvement decreased relative to the level predicted on the basis of previous trends for 18-20 year-olds in each of the states studied. Reductions among younger drivers in Michigan (17.7%) and Wisconsin (20.5%-28.6%) were substantially greater than the 8.8% decrease observed among young Illinois drivers subsequent to raising the legal drinking age. Reductions among 18-20 year-old drivers attributed to intervention of the drinking age change in Michigan in 1978-79 are well within the range of decreases in alcohol-related highway crashes involving drivers of the same age in Wisconsin in 1980-81, where there was no evident intervening legal variable.

Chances for changes of these magnitudes occuring without intervention range from .05 (5 in 100) to less than .001 (1 in 1,000), supporting the conclusion that the change in Wisconsin, and the changes in Michigan and Illinois are not due to chance fluctuation, or the changing legal drinking age, but to changes in other influences on young drivers' drinking and driving behaviors.

CONCLUSIONS

The study results show that raising the legal drinking age had no greater impact on 18-20 year-old drivers' highway crash involvement in Michigan and Illinois than not changing the legal drinking age had on crashes involving 18-20 year-old drivers in Wisconsin. These results are entirely consistent with those of earlier research conducted by the National Highway Traffic Safety Administration[10] and more recent analysis of data for twenty-two states which retained different drinking ages over time[11], which found no significant difference in 18-20 year-old drivers' fatal crash involvement attributable to differences in the states' legal drinking ages.

Although there clearly is a compelling public safety interest to be served in reducing the incidence of alcohol-related highway crashes and other negative consequences of alcohol abuse among young people, **the results of this study do not support the proposition that rescinding or restricting the legal drinking priveleges of 18, 19, or 20 year-old adults is an appropriate or effective mechanism for accomplishing that public purpose.**

---

(1) Douglas RL, Filkins LD, and Clark FA: **The Effect of Lower Legal Drinking Age on Youth Crash Involvement, Final Report**, Washington, D.C., National Highway Traffic Administration, 1974

(2) Wagenaar AC: **Effects of Raising the Legal Drinking Age on Traffic Accident Involvement of Young Drivers**, Ann Arbor, The University of Michigan Highway Safety Research Institute, 1981.

(3) Williams AF, Zador PL, Harris SS, Karpf RS: **The Effects of Raising the Legal Minimum Drinking Age on Fatal Crash Involvement**, Washington, D.C, Insurance Institute for Highway Safety, 1981.

(4) Klein TM: **The Effect of Raising the Minimum Legal Drinking Age on Traffic Accidents in the State of Maine**, Washington, D.C., National Highway Traffic Safety Administration, 1981.

(5) No Author: **Motor Vehicle Accident Experience**, Boston, Mass., Massachusetts State Registry of Motor Vehicles, 1978-81.

(6) Maxwell DM: **Impact Analysis of the Raised Drinking Age in Illinois**, Washington, D.C., National Highway Traffic Safety Administration, 1982.

(7) The overall Chi-square for each statistic was partitioned into its individual degrees of freedom, each of which was compared to tabulated values for a X^2 with one degree of freedom. (For discussion of similar application, see: Douglass RL. **Michigan's Eighteen Year-Old Legal Drinking Age, Its Impact on Youth Crash Involvement**, Lansing, Mich., Office of Highway Safety Planning, 1977.)

(8) $\hat{y} = a + bc$, $a = \dfrac{\sum_{i=1}^{n} y^i}{n}$ $b = \dfrac{\sum_{i=1}^{n} x^i y^i}{\sum_{i=1}^{n} x_i^2}$ c = X value for intercept year, $(X^i = 0)$

(9) Wagenaar AC: Effects of the Raised Legal Drinking Age on Motor Vehicle Accidents in Michigan, **The HSRI Review**, 1981:11,4

(10) No Author: **The Legal Drinking Age; A States Study**, Washington, D.C., National [illegible]ay Traffic Safety Administration, 1975.

(11) Birkley MM, Ganser LJ, Quirke MA: Traffic Accidents and the Legal Drinking Age in Wisconsin: A Second Opinion, Unpublished Manuscript, in review, 1983.

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[The following information was subsequently received for the record:]

Insurance Institute for Highway Safety,
Washington, D.C., June 16, 1983.

Senator **John Danforth,**
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

Dear Senator Danforth: On May 26, 1983, Matthew Protos, President of the National Licensed Beverage Association, made a statement before the Committee on Commerce, Science & Transportation concerning Title II of Senate Bill 1108, the "Highway Safety Act of 1983." In his statement, Mr. Protos argued against the proposal to raise the legal drinking age to 21 years in every state, basing his opposition on a document published by the Blaney Institute entitled "Death and the Legal Drinking Age: A Tri-State Study". In this document, it is claimed that the reductions in crash involvement occurring among young drivers in Michigan and Illinois after the drinking age was raised in those states were not as great as reductions in Wisconsin, where the drinking age was not raised. The document concluded that the drinking age should not be raised.

The Blaney Institute document is scientifically inadequate. It presents data on three measures of alcohol-related crash involvement for 18–20-year-olds in Wisconsin for the years 1976–1981. Data from 1976–1980 were used to predict expected values for these measures for 1981, and comparisons of actual and expected values indicated that there were reductions in alcohol-related crash involvement in 1981. The two measures which showed the largest reductions were then compared with reductions reported by other researchers for Michigan and Illinois (see Table 3). These comparisons are invalid. As indicated by Table 3 in the Blaney Institute document, the "comparisons" are based on different measures of alcohol-related crash involvement, different years, and a different age grouping in the case of Illinois. For example, the study compares the change in involvement of 19–20-year-old male drivers in nighttime single-vehicle crashes in Illinois in 1979 with the change in number of fatally injured 18–20-year-old drivers with blood alcohol concentrations greater than 0.05 percent in Wisconsin in 1981.

This is a classic example of comparing apples and oranges, and the dissimilarities make the comparisons meaningless. The credibility of the Blaney document is further eroded by the use of 1981 reduction data for Wisconsin (different years were cited for the other states); this overlooks the fact that in 1981 fatalities dropped in virtually all states.

Many studies using scientifically valid research methods and procedures have found that raising the drinking age results in substantial reductions in crash involvement among those affected by the law change. I have enclosed a copy of a study which found that in nine states that raised their drinking age, there was on average a 28 percent reduction in nighttime fatal crash involvement among drivers to whom the law changes applied. The Blaney Institute document has no validity whatsoever and does not merit serious consideration.

Yours truly,

Allan F. Williams, Ph. D.,
Senior Behavioral Scientist.

Madison, Wis., *June 27, 1983.*

Senator **Bob Packwood,**
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

Dear Senator Packwood: In his appearance before your committee on May 26, 1983, Mathew Protos, President of the National Licensed Beverage Association presented the results of "Death and the Legal Drinking Age: A Tri-State Study" which I conducted for the Blaney Institute, Inc., a conservative think-tank headquartered in Madison, Wisconsin.

On June 16, 1983, Allan Williams, of the Insurance Institute for Highway Safety addressed a letter to you criticizing the scientific merit of our study.

Readers of both will find great difficulty relating the contents of Williams' critique to the contents of our study, in that Williams appears to have misread, misunderstood, misinterpreted or deliberately misrepresented the data, methodology, illustrations and conclusions presented in our work.

A point-by-point rebuttal of Williams' critique is attached. In breif, Williams' fails to meet the first requirements of objective criticism: reading, understanding and fairly representing that which is criticized.

Williams offers no new information and provides no scientific basis for rejecting or revising our findings and conclusions. On the contrary, the validity of our study is re-enforced by the fact that Williams found no valid basis for criticism, but chose instead to criticize his own misinterpretation of what we presented.

Also enclosed is a note on Williams' nine-state drinking age impact study, the results of which are clearly at odds with reality, but which do appear to provide the insurance industry with a "scientific" excuse for raising premiums and generating more profitable premium-to-loss ratios from products sold in lower legal drinking age states.

We welcome the opportunity to respond to both misguided and valid criticisms of our work. The issue is critical, and good information is essential. We believe that the information provided in our paper is valid, and an appropriate consideration in continuing public discussion of the issue.

Sincerely,

MICHAEL M. BIRKLEY.

RESPONSE TO DR. WILLIAMS

Williams' first criticism is that we used only "the largest reductions" for comparison with Michigan and Illinois, implying that the smaller figure (reductions in Had-been-drinking crashes) was not used because it was smaller than the same data item for Michigan. As stated in our study "The data selected for comparison in Table 3 are those least likely to be distorted by influences other than real occurances." We did not compare the results of HBD analyses for the same reasons Wagenaar, and most responsible highway safety researchers place little reliance on HBD data; namely, they are subject to distortion due to a variety of influences on initial observers.

Williams' second criticism is that changes in three-factor-surrogate and fatal crash data can not be compared; "a classic example of comparing apples and oranges". This criticism reflects a clear lack of knowledge of the significance and usefulness of the three-factor-surrogate 3FS measurement. Developed by Wagenaar's predecessors at the University of Michigan Highway Safety Research Institute in 1974, 3FS data are exactly what the name implies: scientifically valid substitutes for real alcohol-related fatal and serious injury crashes. Research has shown that changes in 3FS data values for the same population are statistically parallel with changes in the data values obtained from analyses of real alcohol-related occurances. (See: Douglass, R. L., L. D. Filkins, and F. A. Clark. The Effect of Lower Legal Drinking Ages on Youth Crash Involvement. Ann Arbor: The University of Michigan, Highway Safety Research Institute, 1974.)

A more appropriate analogy than Williams simplistic "apples and oranges" would be: comparing changes in the number of headlights installed, with changes in numbers of engines installed in different auto production plants to determine differences in their total automobile production.

Williams also misrepresents the years given in Table 3 to be the actual study periods in the three states and criticizes comparisons of changes occuring in different years. As stated in the column heading, the figures given are for "Change Years". These were the only years during the period 1977–81, in which there were statistically significant decreases in alcohol-related crash involvement among younger drivers relative to non-alcohol crashes among the same driver age group, and no change in trends for crashes of any kind among older drivers in the states studied.

Williams further states that our study "overlooks the fact that in 1981 fatalities dropped in virtually all states." Here again, Williams is wide of the mark. Our study makes no mention of the general, nationwide decrease in fatalities because it was found to be entirely irrelevant. That is, there was no corresponding statistically significant decrease in alcohol-related fatalities among younger drivers in the comparison states in 1981.

Williams has overlooked the data provided in Table 1, and conveniently failed to mention that the nationwide reduction was equally distributed in terms of alcohol versus non-alcohol-related crashes among age groups as were those in Illinois and Michigan, but not in Wisconsin, in 1981.

A NOTE ON WILLIAMS' STUDY

Williams' nine-state study "The Effects of Raising the Minimum Legal Drinking Age on Fatal Crash Involvement" (Insurance Institute for Highway Safety, 1981) predicts that "any single state that raises its legal drinking age can expect the involvement in nighttime fatal crashes of drivers . . . to which the law applies to drop by about 28 percent."

According to other drinking age impact studies and observation, Williams' prediction is clearly out of touch with reality in:

Illinois—where Maxwell's study of one complete post-change year (as opposed to the 9 months used by Williams) revealed an 8.8 percent reduction in 3FS crashes, not 28 percent.

Iowa—where the Governor's Highway Safety Office reported an increase in the first post-change year (deleted from Williams' study) followed by a return to 1978 levels in subsequent years.

Massachusetts—where the Commissioner of Probation and the Registrar of Motor Vehicles Report that alcohol related occurrences increased among those affected by raising the age.

Florida—where Morris recently found no significant change among drivers of any age attributable to raising the age.

Maine—where Wagenaar found no significant reduction in serious crashes and officials of the state highway patrol report no change subsequent to raising the age.

Minnesota—where crashes among 18-year-olds during the immediate post change period (data for which were not included in Williams study) increased significantly and returned to pre-change levels in subsequent years.

Montana—where Williams' own study found an increase among those affected.

You don't need a Ph.D. to know that three out of nine is not a sure thing. Williams' "28 percent reduction" prediction was wrong in six of the nine states studied, and also wrong in Florida.

Williams' study is fatally flawed by:

The false assumption that changes in nighttime-to-daytime fatal crash ratios (NDR) are constantly related to changing alcohol involvement. (Unlike 3FS data, which have been tested and found to be scientifically reliable indicators of alcohol-related driving behaviors, NDR data have not.)

Use of partial and inadequate data; less than one year's post-change data in Illinois, and exclusion of first year post-change data from Iowa and Minnesota, which would have significantly altered the results.

Senator **Danforth**. Thank you, sir.

Mr. Baxter.

Mr. **Baxter**. Thank you, Mr. Chairman.

I am Terry Baxter, vice president of GEICO, and I am here today as chairman of the Highway Safety Advisory Panel of the Highway Users Federation. With me is Robert Calvin, the Federation's manager of highway safety programs.

The Federation is a national coalition of businesses, industries, and individuals working to improve the safety and efficiency of the Nation's highway transportation system. Our members are major producers and consumers of highway transportation products and services. They are very much concerned about the social and economic losses due to traffic accidents. Your bill offers a number of measures for the reduction of traffic accidents, and we appreciate this opportunity to comment and endorse it.

We support the concept of section 204 of the bill, which would identify drugs along with alcohol. However, to make progress toward a solution for the drugged-driving problem requires more than a simple word change. The level of knowledge of drugged driving leaves many unanswered questions about the effect of drug use on drivers' perceptions and on driving performance. It also leaves questions about what type and level of drug use creates what type and level of impaired driving.

Therefore, I think it might be difficult for performance criteria to be established for incentive grants. We believe a practical approach is to provide a good deal of flexibility to the States so they can use these grants to explore new ways to manage this growing and complex enforcement problem. At the same time, we think a blue ribbon study should be mounted to determine the magnitude of the drugged-driving problem and what solutions work to control it.

For example, there is not a test such as the alcohol breath test for measuring drug use at the accident scene. It is not likely that States themselves will have the capability or resources to undertake a study of the size and depth needed to lead the way in how best to control drugged driving. A study by a respected national research organization could become the impetus for uniform State-by-State action in drugged-driving control.

The Federation also supports the concept of encouraging States to enact laws setting a minimum drinking age of 21 for all alcoholic beverages. Again, we believe States should be given some flexibility in their efforts to comply with this grant criteria so that they can reduce any adverse effect that a minimum age law might have on other laws such as relating to employment where alcoholic beverages are sold.

Section 206 of the bill, which would provide grants to strengthen the use of computerized traffic record systems, also has the Federation's strong endorsement, and in my prepared text I have endorsed the driver record system, as others have before me. After hearing your explanation of what you intend, I think that would be a very useful measure to reduce traffic accidents.

With permission of the Chair, I would like to comment briefly on the provisions in title I to reward States with grants for enactment of a child restraint use law, a provision that would contribute importantly to the national effort seeking adoption of this law in each State. We believe these grants should be used for enforcement activities, child seat loaner programs, and efforts to make the laws uniform among the States.

Congressman Barnes has introduced a bill in the House which the Federation has endorsed. We hope that along with your leadership, child passenger protection can be improved and expanded.

In regard to passenger protection, it is appropriate to recall that the Surface Transportation Assistance Act of 1978 called for a study by the National Academy of Sciences of methods for increasing safety belt use. The study report printed in March 1980, recommended in part that the Federal Government—in its own activities—should provide an example of safety belt use.

The report said that Federal agencies should require on-the-job safety belt use by all persons in all vehicles operated under federally funded programs. We have such a requirement in our own company for our company drivers.

The General Services Administration reports that there are almost half a million motor vehicles in the Federal fleet, and a much larger number would be involved in federally funded programs. The required use of safety belts in all of these vehicles would represent an important boost to national safety belt use.

The National Academy of Sciences report provides cogent and compelling reasons for advancing the safety belt use recommendation. Now is the time to implement it. The Congress mandated the study, and the Congress has received the recommendation. Your legislation is an opportunity to make it Federal policy. We urge the committee to grasp this opportunity by reviewing findings and conclusions of this report, and where practical and feasible, incorporating them into this legislation.

And having no prepared testimony on the MX missile, that concludes my remarks.

[General laughter.]

[The statement follows.]

STATEMENT OF TERRY L. BAXTER, CHAIRMAN, HIGHWAY SAFETY ADVISORY PANEL, THE HIGHWAY USERS FEDERATION

Good morning.

I am Terry L. Baxter, Vice President for employee relations of the Government Employees Insurance Company. I am here as chairman of the Highway Safety Advisory Panel of the Highway Users Federation. With me is Mr. Robert M. Calvin, the Federation's Manager of Highway Safety Programs.

The Federation is a national coalition of businesses, industries, and individuals working to improve the safety and efficiency of the nation's highway transportation system. Our members are major producers and consumers of highway transportation products and services. Consequently they are knowledgeable and seriously concerned about the social and economic losses due to traffic accidents, and they are vitally interested in proposals and legislation directed to solutions for this nation's traffic accident problem.

Senate Bill 1108, the Highway Safety Act of 1983, offers a number of constructive measures for the reduction of accidents and the protection of lives in highway transportation. The Federation, therefore, appreciates this opportunity to comment on some of them, and to cite certain areas where we think the measures could be strengthened.

The Federation, with its long record of activity in the national traffic safety movement, recognizes driver impairment and accident recordkeeping as two of the areas in greatest need of improvement. We are encouraged, therefore, that the attention of Congress is focused through Senate Bill 1108 on three problems directly related to accident countermeasures—drugged driving, the minimum legal drinking age, and traffic records—all of them set forth in Title II.

The Federation is convinced that improvements in each of these areas would lead to marked reductions in traffic accidents. In line with this conviction, the Federation has produced a number of its own programs to help curb impaired driving. These include a "Guide to More Effective Drunk Driving Legislation in the States", and a "Drinking Driver Program Inventory" for community analysis of facilities to curb drunk driving. One of this year's community safety programs of the Federation's Dealers Safety & Mobility Council targets on the evil of drugged driving. An audio-visual program entitled "Double Trouble: Drugs and Driving" has just recently been made available to more than 8,000 new car, truck, and tire dealers across the country.

We request permission to submit samples of these materials for the record,[1] because they have received very favorable public response, and we feel that the Federation's approach to these issues may be of interest to the Committee.

The Federation's assessment is that drugged driving is an extremely complex area in serious need of better understanding through further research.

We support the concept of Section 204(a) of the Act, which would amend Section 408(a), Title 23, of the U.S. Code by striking "alcohol" and inserting "alcohol and other drugs."

Available information indicates that "other drugs" are becoming a serious national traffic safety problem. The magnitude has not been established by conclusive scientific evidence. It is estimated that drugs other than alcohol are involved in at least four percent of all traffic crashes. This estimate is believed to be conservative for crashes in general and especially with respect to fatal crashes. Even so, a four percent involvement rate translates to a yearly total of 2,000 fatalities, 80,000 serious injuries and nearly three-quarters of a million traffic crashes.

It is clear that states need to be encouraged to take constructive steps against drugged driving. The enticement of including enforcement of drugged driving laws as one of the supplemental criteria states may meet in order to receive additional incentive grant funds under Public Law 97-364 is appropriate encouragement in our view.

But the criteria for award of these grants is not clear. Countermeasures for drugged driving are far behind those for drunk driving. The criteria for regulating incentive grants under Section 408 is alcohol-specific. But the mechanics and tools for drugged driving enforcement are seriously inadequate. For instance, blood alcohol concentration (BAC) levels have been firmly established, but the relationship of specific blood/drug levels to driving impairment have not been established. Further, there is not a test such as the alcohol breath test for measuring at the accident scene the use of drugs other than alcohol. There has been no national study of the relationship of other drugs to crashes. And there are no plans that we know of to conduct such a study. The drugged driving issue is virtually untouched.

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[1] The material referred to has been retained in the Committee files but it is available through the Highway Users Federation.

A solution for the drugged driving problem requires more than a simple word change. The level of knowledge of drugged driving leaves many unanswered questions about the effect of drug use on driver attitude and driving performance. Therefore, it will be difficult to develop performance criteria for incentive grants.

We believe it would be practical to provide a good deal of flexibility to the states so they can use these grants to explore new ways to manage this growing and complex enforcement problem.

It is not likely that states by themselves will have the capability or resources to undertake research of the depth and extent needed to lead the way in how best to control drugged driving. It is recommended, therefore, that a blue ribbon study group be appointed under the egis of the National Academy of Sciences or a similar organization to undertake the scientific study that would be required to understand adequately the complexities of drugs and driving.

The committee would be charged with responsibility to determine the magnitude of the drugged driving problem, and what works to control it.

The Federation also supports the concept of encouraging states to enact laws setting a minimum drinking age of 21 for all alcoholic beverages.

Again, we believe states should be given some flexibility in their efforts to comply with these grant criteria so that they can reduce any adverse impact that a minimum age law might have on other laws related to alcohol use.

Minimum legal drinking age limits in the states were established in the years immediately following repeal of Prohibition. These limits have undergone more than 100 modifications since their inception in the 1930s.

This uncertainty alone may justify the encouragement that Congress is offering to the states to reconsider the drinking age limit in the light of its value as a drunk driving accident countermeasure.

The minimum legal age for drinking and/or purchasing alcoholic beverages varies from 18 to 21. Four states set 18 years as the minimum; 17 states require 19 years of age; six states require 20 years of age; 15 states require 21. Eight states and the District of Columbia have varying minimums depending upon the type of beverage purchased.

Raising the miminum age to 21 could be the single most effective weapon in the campaign to stop drunk driving deaths among young people. States that have raised the limit have experienced substantial reductions in nighttime fatal crashes among age groups affected.

Michigan lowered its drinking age to 18 in January, 1972 and raised it back to 21 in December, 1978. A Michigan study concluded that police notations of "had been drinking" in the crash involvements of 18- to 20-year-old drivers were reduced 31 percent in the first 12 months after the drinking age was raised.

Illinois raised its minimum legal drinking age from 19 to 21 in 1980, and reported an 8.8 percent reduction in the first year in single-vehicle, nighttime, male driver involvement in alcohol-related accidents.

Another study using data from the Fatal Accident Records System (FARS) of the National Traffic Safety Administration analyzed results in nine states which raised their legal minimum age. Eight of the nine states experienced a reduction in nighttime fatal crash involvement among drivers in the affected age groups. The average annual reduction was 28 percent.

Based on results of these and other studies, the National Transportation Safety Board has concluded that alcohol-related accidents in the 18- to 21-year-old age group can be reduced by raising the minimum legal drinking age to 21, and the Board has recommended that this be done.

The proposed increase in the minimum legal drinking age may conflict with the fact that each jurisdiction has its own history of drinking age laws. Each jurisdiction must review its present statutes primarily in the light of its particular problems. For some states, therefore, an incentive grant might be better used as a reward for better defining the minimum drinking age problem and pursuing a positive, cost-beneficial way to eliminate it.

Additionally, there is a wide variety among the states of laws related to alcohol use. These might include laws or actions related to employment where alcohol beverages are served and to problems of uniformity and enforcement among bordering states. For instance, special enforcement programs to reduce the seriousness of underage drinking/driving problems at a state border might be most worthy of an incentive grant.

For these reasons, the Federation believes states should be given flexibility in their efforts to comply with grant criteria so that they can reduce any adverse impact that a minimum age law might have on prevailing programs and laws.

Section 206 of the bill, which would provide grants to strengthen use of computerized traffic record systems, also has the Federation's strong endorsement.

The federal safety role should include assurance that state and local traffic accident data are nationally compatible and available for use. And the state and local role should include the collection and compilation of accident information in a format conforming to statistical needs of a national records system.

Efforts to reduce drunk driving have failed partly because the importance to drunk driving countermeasures of accurate, complete and timely accident records frequently has been ignored. Driver records should be an integral part of the campaign against drunk driving.

At the national level, the National Driver Register (NDR) is the best source for this data. More than half of the 6.5 million suspended drivers in the National Driver Register are there for drunk driving. At least three-fourths of drivers in the file are there for reckless driving charges which actually represent downgraded drunk driving charges.

Many drunk drivers are much more dangerous on the road than their individual driver records would indicate. Many times, out-of-state violations have never been received or, if received, not entered on a driver's home state record. Many drivers have multiple licenses that distribute their violations among several states. Some offenses are entered only in county or municipal records, never combined with other offenses in a state's central file. Frequently, the National Driver Register is not checked at the time or original licensing or license renewal.

Slow mail communications with the states has been a major deficiency with the National Driver Register. An electronic communications system would increase the speed of information transmission from the current two-weeks to less than 60 seconds. An electronic system is said to be capable of cutting costs more than 80 percent. Improvements in state-level systems could be expected to have similar cost benefits.

Despite slow transmission time, the absence of some states, and the failure of some states to make full use of NDR information, the system has been handling about 90,000 file check requests daily and providing more than 1,000 identifications daily for 47 participating states. So the need for a more effective system is evident.

Under the new NDR system established by Public Law 97-364, all records will be maintained by the states. Therefore, data would only be as complete, accurate, and timely as the records of the states themselves.

Efficient and consistent use of driver records would make a significant difference in any major program to combat the drunk driving problem. Therefore, we think the legislation should clearly indicate that the grants are designed to help states interact with the National Driver Register, and to provide courts with ready access to records dealing with driving offenses.

With permission of the chair, I would like to comment briefly on a provision in Title I to reward states with grants for enactment of a child restraint use law, a provision that would contribute importantly to the national effort seeking adoption of this law in each state.

We believe these grants should be used for enforcement activities, child seat loaner programs, and efforts to make the laws uniform among the states. Connecticut and Nebraska for example, only require children under the age of one year to be in a child seat. In other states, the ages for child seat use are different. Lack of uniformity can be confusing to interstate travelers.

In regard to passenger protection, it is appropriate to recall that the Surface Transportation Assistance Act of 1978 called for a study by the National Academy of Sciences of methods for increasing safety belt use. The study report, printed in March 1980, recommended, in part, that the federal government—in its own activities—should provide an example of compulsory safety belt use. The report said federal agencies should require on-the-job safety belt use by all persons in all vehicles operated under federally-funded programs.

The General Services Administration reports that there are almost 500,000 motor vehicles in the federal fleet, worldwide. An even larger number would be involved in federally-funded programs. The required use of safety belts in all these vehicles would comprise an important impetus to efforts for nationwide safety belt use.

The National Academy of Sciences report provides cogent and compelling reasons for advancing this safety belt use recommendation. Now is the time to implement it. The Congress mandated the study, and the Congress has received the recommendations.

We urge the Committee to grasp this opportunity by reviewing findings and conclusions of this report, and, where practical and feasible, incorporating them into this legislation.

Thank you.

Senator DANFORTH. Gentlemen, thank you very much.

Mr. Protos, as I understand it, you simply disagree with the Insurance Institute for Highway Safety, and you disagree with the President's Commission. You just dispute their factual conclusions.

Mr. PROTOS. There are many factors involved here. In fact, one comment I would like to make in regards to Governor Volpe's statement that lowering of the drinking age in many States in the early seventies caused a significant increase in traffic fatalities, when in fact from 1971 to 1973, 26 States lowered the drinking age, and in those 26 States in the 2 succeeding years traffic fatalities were reduced by 16 percent.

Now, I am not concluding that lowering the drinking age had any effect on the decrease in traffic fatalities. The better highway engineering, the reduction to the 55-mile speed limit, so many factors are involved here. We cannot just state that lowering the drinking age had any significance or anything whatsoever to do with it, no more than can we today say that raising the drinking age has any significant effect. It might have some effect. I do not think it is significant—certainly the public awareness and the stricter enforcement of existing laws.

One comment I would like to make. Practically everybody spoke today about—a fatal crash that was talked about today involved a person who was driving with a suspended or revoked license. I think the answer might be a little more stringency on those people driving with revoked and suspended licenses, a mandatory jail sentence for people who are driving on revoked and suspended licenses. Our industry does know that by far the majority——

Senator DANFORTH. I think we should take the license away, but let me just ask you this, and it is hypothetical. Obviously, you would dispute the hypothetical, but let us suppose that there were indisputable evidence that raising the drinking age did reduce very substantially the number of highway deaths, just hypothetically, and you dispute the hypothetical, I understand that, but if that were the case, you would not argue against raising the drinking age, would you?

Mr. PROTOS. Absolutely not, nor would our association.

Senator DANFORTH. So really it is a question of fact as far as you are concerned.

Mr. PROTOS. Yes, sir.

Senator DANFORTH. Now, Mr. Baxter, with respect to drugged driving and the state of knowledge and the effect of drugs and so forth, you said that we need more information. Earlier Secretary Volpe was asked whether or not his Presidential Commission on Drunk Driving addressed the question of drugged driving, and his answer was "No," that he felt that the mandate of the Commission was to look at drunk driving only.

Should we have a Presidential Commission on drugged driving, in your opinion, or should there be some other forum for gathering the information?

Mr. BAXTER. I think what I was thinking of in the testimony was something along the lines of a study by the National Academy of Sciences to determine what the facts are in levels of drug use, what drugs, the period of time that you are impaired, and things similar to what we know about alcohol after a long period of studying. Even after knowing a lot of facts about alcohol, we have different levels of enforcement activity and different blood alcohol content levels in different States.

And so even with the facts pretty well known, there is quite a lack of uniformity in the alcohol field. I think starting from a much less—a much lower level of knowledge in drugs and driving, we would have a very much larger problem in the uniformity in States themselves setting limits.

So, I was really thinking of some national research organization that the Congress could ask to establish the facts as a way to encourage States. I think a lot of very useful information, suggestions and participation has taken place as a result of the Presidential Commission on Drunk Driving. So I think a similar format would probably be beneficial. But that is not what I was thinking of when I said what I said.

Senator DANFORTH. You were thinking of really a scientific analysis?

Mr. BAXTER. Right.

Senator DANFORTH. Is there such a thing underway, or has there been any such effort?

Mr. BAXTER. I will let Mr. Calvin say what he is saying to me, which is that there has not been a national study that we are aware of.

Mr. CALVIN. And there are not plans for any, either, as far as we are aware. Most of the studies have been at the State level or regional studies.

Senator DANFORTH. If the National Academy of Sciences came out with a study, would that be viewed as the word from on high on the subject, or would that just set in motion a huge dispute over what they found?

Mr. CALVIN. We think it would have high credibility and that it would be a good foundation for future efforts. And maybe one of the recommendations would be a Presidential Commission.

Senator DANFORTH. Would that take a long time? One thing that we find in the Senate is, if we want to delay something forever, we agree to have a study. Would such a study just take forever, and then when it is finished, then all of the opponents of the study begin offering counterstudies, somewhat like the effect of, say, the Surgeon General's report on cigarettes, where that is immediately disputed, and the dispute goes on?

Mr. BAXTER. Well, there is no question that it would take some time, and I really have not got a good idea of how long it might take.

Senator DANFORTH. You know, there is a question of whether alcoholics can drink. There is the same position that somebody had the idea that they can.

Mr. **Baxter**. Well, we have to start, and if we do not start with a national study, I guess States will do their best to attempt to set their own standards, and then each one of those will be open to challenge and court cases and attack State by State, and that sounds to me like a longer route.

Senator **Danforth**. That is a very useful suggestion, I think.

Gentlemen, thank you very much.

That concludes this hearing, and the next one is on June 14.

[Whereupon, at 12:02 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

HIGHWAY SAFETY ACT OF 1983: TRUCK AND BUS SAFETY

TUESDAY, JUNE 14, 1983

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth presiding.

OPENING STATEMENT BY SENATOR DANFORTH

Senator **Danforth**. This morning we will continue the Commerce Committee's hearings on S. 1108, the Highway Safety Act of 1983. Today we will hear testimony concerning title III of this bill, which deals with truck and bus safety.

Motor carrier safety has long been an issue of concern to this committee. Hearings during the past three Congresses demonstrated the magnitude of the safety problem. Last year Congress took steps to address this problem in title IV of the Surface Transportation Assistance Act of 1982. This bill authorized funds for State safety enforcement efforts and provided whistleblower protection for trucking company employees.

S. 1108 takes these provisions a step further by strengthening the Department of Transportation's safety enforcement authority and requiring that actions be taken by the Federal Government to insure the continued safe operation of motor carriers.

S. 1108 would also require DOT to undertake research into safety problems associated with heavy trucks, including an examination of the handling, stability and crashworthiness of these vehicles.

I look forward to receiving comments from our witnesses today on possible steps we could take to improve motor carrier safety. We have a long list of witnesses today and I think all of the witnesses have been given time limits for their testimony.

Let me say that it is very frequent for witnesses to ask for permission that their statements be included in the record. Do not take part of your 5 minutes to ask for permission; consider it given.

All of your statements will be included in the record, and what we would like very much is a summary of your statements this morning. I have an opening statement from Senator Hollings to be included at this point.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Today we are examining the important issue of motor carrier safety—one with which this Committee has been concerned for several years. In fact, during the last several Congresses, this Committee has held extensive hearings on this issue and has reported legislation similar to Title III of S. 1108, which is the subject of our hearing today.

I am encouraged by certain statistics which indicate a recent decrease in injuries and property damage related to certain types of motor carrier accidents, and I commend the industry for its part in attaining these improvements. Nevertheless, we must continue to strive for a strong Federal safety program to ensure continued improvements in safety on our highways and for those who operate motor carriers.

With these concerns in mind, I have supported, and will continue to support, legislation which ensures that safety is a priority in motor carrier operating authority; that a clear and comprehensive Federal regulatory authority exists; that enforcement tools are adequate and effective; and that driver safety is enhanced. Such legislation would complement provisions included in the gas tax legislation passed last year, which provided for state enforcement programs and also for protection of employees who find themselves amidst unsafe conditions.

Certain of the witnesses today will be proposing modifications to the proposed legislation, and I look forward to working with interested parties on these and other suggestions for ensuring a strong safety program and a safer motor carrier industry.

Senator **DANFORTH**. Chairman Taylor, it is good to have you back. Thank you very much.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY JAN ROSENAK, LEGISLATIVE COUNSEL; AND BERNARD GAILLARD, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Mr. **TAYLOR**. Good morning, Mr. Chairman. Just let me quickly introduce the two people I have at the table with me. On my left is Bernard Gaillard, who is our number two man in our Office of Compliance and Consumer Assistance, and on my left is Jan Rosenak, our legislative counsel.

We do appreciate the opportunity to testify today to present the views of the Interstate Commerce Commission and my own views regarding the important subject of motor carrier safety. Although we no longer have direct jurisdiction in this area, the safety of motor carriers which operate under Commission authority is a continuing concern of our agency, and we make every effort to insure that carriers which received Commission authority will operate in a safe manner.

In my opinion, there are three important elements which combine to determine the safety of motor carrier operations on our public highways—safe roads, safe drivers, and safe equipment. Since the Commission has no expertise in the area of highway repair and construction, we will not comment on that element.

With regard to safe drivers, I am hopeful that the pilot project which is under way concerning a National Driver Register will lead to information on the extent of the problem and will aid in detecting drivers who have a pattern of violations. In addition, the National Transportation Safety Board has recommended that truck drivers be required to meet mandatory Federal training standards before being licensed to drive, and I believe that this approach should also be studied.

In the equipment safety area, I believe the requirement that commercial motor vehicles pass an annual inspection of safety equipment, as provided for in section 313 of S. 1108, might go a long way toward insuring that all commercial motor vehicles traveling on our public highways are capable of operating safely.

Another important aspect of motor carrier operations which has an impact on safety is the requirement that carriers maintain insurance levels which are adequate to protect the public. As you know, the Motor Carrier Act and the Bus Regulatory Reform Act require DOT to set minimum levels of financial responsibility for motor carriers and the Commission must assure that carriers have filed evidence of insurance that complies with the prescribed levels.

Liability insurance primarily assures financial compensation for serious personal injuries or property damage resulting from negligent vehicular operations. It can be purchased at a price, however, notwithstanding a carrier's safety record. Therefore, it is evident that insurance requirements alone are not enough to insure safe commercial motor vehicle operations.

I would like to turn now to section 314 of S. 1108, which is the provision that affects Commission activities most directly. Section 314 would require the Commission and the Department of Transportation to establish specific safety fitness standards applicable to motor carriers applying for new or additional operating authority. The Commission and DOT would also be required to develop adequate procedures for determining whether applicants meet these safety fitness requirements. The Commission believes that this provision is a useful approach to the safety problem and that specific fitness safety requirements might aid our efforts to insure that those carriers which gain entry into the motor carrier industry are in fact safe.

The fitness of motor carrier applicants is an issue which the Commission takes quite seriously and one which is very important to me personally. For example, last year during Congressional consideration of the Bus Regulatory Reform Act the Commission advocated a provision to strengthen our ability to prevent unsafe motor carriers of passengers from operating. Section 22 of that legislation was adopted as a result of our efforts.

Next let me describe our present procedures for determining whether applicants of motor carrier authority have demonstrated that they are fit with respect to safety. Since the Bureau of Motor Carrier Safety within DOT has primary responsibility in the safety area, cooperation between our agencies is essential. Last fall, Secretary Lewis and I signed a new Memorandum of Understanding and Agreement which formalized arrangements for the sharing of information and participation by DOT in safety-related fitness proceedings before the Commission.

Under this agreement, the Commission requests the safety ratings of applicants from BMCS before making any determination of fitness. If an applicant for a temporary authority has an unsatisfactory safety rating, the Commission will not issue the carrier authority unless there is an urgent transportation need which is determined to outweigh the safety consideration. If the safety rating is conditional or reflects insufficient information, the Commission may grant the operating authority and may condition the grant upon compliance with applicable safety regulations.

Applications for permanent authority are handled somewhat differently. If BMCS is not satisfied as to the safety fitness of a carrier applying for permanent authority, it can petition to intervene in the case. The Commission's Office of Compliance and Consumer Assistance can also petition to intervene on the issue of safety fitness and may ask BMCS to assist in presenting safety evidence to the Commission. If questions are not raised regarding an applicant's safety fitness, then the Commission will determine the carrier's fitness based on the record.

A recent safety-related issue facing the Commission involves the problem of illegal operations by Mexican carriers. We have stepped up our enforcement efforts in this area by opening a field office in San Ysidro, Calif., which is the gateway from Tijuana. The Commission staff is preparing an in-depth study of solutions to this problem, including increased cooperation with the Departments of Treasury and Transportation.

We believe that our procedures for determining the safety fitness of applicants for operating authority, together with the insurance requirements, are a significant measure of an applicant's willingness and ability to operate safely. However, we also believe that they could be improved and that section 314 of S. 1108 might offer a useful approach to dealing with this issue. I personally think it would be very helpful.

The Commission would welcome the opportunity to continue our efforts with the Department of Transportation to improve the safety of our regulated carriers. We do not believe, however, that the establishment of fitness should be so restrictive and burdensome as to constitute an economic entry barrier.

While this goal will not be easy to attain, it is a very important one. Although the Commission has not endorsed any particular safety fitness requirement, I believe that one possibility might be to require all applicants to submit a safety program with their applications and require that the safety program contain certain elements such as a periodic vehicle maintenance check and safety training programs for employees.

The Commission currently imposes such requirements in some cases where conditional grants of authority are deemed appropriate. If such filings were required, it is possible that onsite inspections would be necessary in order to insure the carrier followed the safety program outlined in its application. I believe that this type of approach could provide a good starting point as the Commission and DOT work to develop safety fitness standards.

There are certain practical problems with safety fitness determinations in licensing. First-time applicants usually have no operating record from which one can make an assessment of their safety. Further, many carriers do not own their own equipment; instead do business by entering into leasing arrangements for equipment and drivers. Therefore, the equipment and drivers the carriers plan to use at the time of application filing may not be the same as those actually used after operations have begun.

One further point should be mentioned regarding the specific language of section 314. Under current law, when the Commission is deciding a motor carrier application, factors of public need and the national transportation policy are actually balanced with the fitness criteria. Mr. Chairman, I believe this is a particularly important point that I would really like to emphasize.

If it is the intent of Congress that a carrier's safety fitness be an overriding consideration in deciding applications for authority, then the legislation should state that intention very clearly and specifically.

In closing, I would like to reiterate the Commission's concern regarding the safety of motor carriers that operate on our Nation's highways. We believe that an increased emphasis on safety matters is crucial in tandem with reduction of economic regulation, and we are pleased to see that the Department of Transportation shares our concern in this area. I am particularly delighted with Secretary Dole's interest in safety.

We thank you again for this opportunity to present the Commission's and my views in this matter. Now, I would be glad to try to answer any questions that you might have.

Senator DANFORTH. Thank you very much, Mr. Chairman.

Do you have any way of quantifying the existing safety problem with respect to trucks? I think all of us have many anecdotes in our own background. If we have spent any time at all driving the highways we have seen truck accidents. I know just last Sunday driving on I-95 down to Richmond there was a terrible truck accident—so we see them.

But I do not know if there is any way of quantifying the extent of the problem just beyond personal anecdote.

Mr. TAYLOR. I could also relate a number of anecdotes, Mr. Chairman, particularly in the bus area, which I think is of particular concern. We all get very excited about people who are flying around up in the air and what kind of safety conditions they have, but we do not seem to exhibit the same amount of concern to those people when they are on a bus on a highway. And statistically their odds are really much worse.

But in terms of providing you with any actual statistics in either the bus or the trucking area, I do not have any figures, but I would think DOT does. I can ask Mr. Gaillard if he has collected anything. There are some records at DOT, accident reports, and I would think that they could assemble that kind of data for you.

Senator DANFORTH. With respect to current safety and fitness determination procedures, how effective are they? To what extent do they actually help create safe conditions?

Mr. TAYLOR. Well, I think they are effective, but I do not think they are as effective as they should be, at least in terms of the ICC's approach. And I think perhaps the best way I can illustrate that is to refer you to a specific case that came up which we have considered. This particular decision of the Commission, which I strongly dissented from, as did Commissioner Simmons, I think illustrates the importance of your section 314 in S. 1108 and why it would be a good idea.

This decision involved an application by Allen B. Robbins, dba Robbins Trailer Service. About the time the application was filed, one of the more maudlin deregulatory zealots did a piece in the newspaper—and I cannot recall which newspaper—about this poor individual having been subjected to all kinds of interference from Washington bureaucrats and so on.

The fact of the matter is that our Office of Compliance and Consumer Assistance asserted in the case that the applicant had dem-

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onstrated a total lack of respect for any government involvement in his business, and that he continued to violate injunctions in the belief that fines are merely a cost of doing business. They also contended that he had demonstrated a persistent and blatant disregard for Commission regulations, the judicial process, and the authority of the Federal courts, and they saw no extenuating or mitigating circumstances warranting a limited-term grant of authority.

Then, the Department of Transportation got into the case, and they argued that the applicant had been in total noncompliance with various recordkeeping requirements. They asserted that the applicant maintained no driver qualification files, no daily driver logs, and no vehicle condition reports. They voiced concern about the continual flagrant violations which they asserted were knowing, willful and without any mitigating circumstances.

Now, despite that, the majority of my colleagues at the Commission, in granting this person limited authority, agreed that the grant of a limited-term certificate was appropriate and that such a certificate should serve both as an inducement and as an opportunity for applicant to prove himself capable of operating within the law.

In my dissent, which is not very long and I would just quickly like to read, I stated as follows: "Applicant's past conduct demonstrates a persistent and total disregard of the Commission's rules and regulations, DOT safety regulations and Federal court orders. Moreover, applicant, who bears the burden of establishing his fitness, failed to introduce any evidence which would demonstrate that he has made a sincere effort to correct past violations. In fact, there is no evidence of record tc show that applicant is presently in compliance with DOT safety regulations.

"The applicant in the proceeding is, without question, unfit"—and that was my opinion—to receive a grant of permaent authority since there was no evidence which would demonstrate that he had corrected his past violations, and that he was also unfit to receive a limited-term certificate.

Accordingly, I stated that I did not beleive the Commission could justifiably grant the applicant even a limited-term certificate with the hope that somehow this would induce him to comply with the law. What we did was to wind up giving him authority for 15 months.

Now I submit a carrier is either fit or unfit, and the Commission gave him a limited-term certificate to go out and commit mayhem on the highways, if he is a safety violator, for 15 months. He can do all kinds of damage in that period of time as well as he can with a permanent authority. In any event, the Commission gave him the authority, and in my opinion he should not have had it. I should add that DOT has appealed this case to the D.C. Circuit Court of Appeals.

I think if you had the standards that are provided for in section 314 where there are specific requirements that must be met and there is a specific arrangement as to how those requirements must be satisfied, the Commission would then be obliged to make an appropriate safety fitness finding on the facts. That is the basic reason why I really support it.

I think this case is a perfect illustration of why it would be an improvement in law.

Senator **Danforth**. You do not see this as an administrative hornet's nest?

Mr. **Taylor**. Well, I just think this kind of situation should not have been allowed to occur, and I believe with your statutory provision it would not occur.

Senator **Danforth**. Should it be a continuing responsibility, I mean, not just the original entry into the business but a continuing safety fitness requirement?

Mr. **Taylor**. Without question, Mr. Chairman, absolutely. We have some general provisions in our law that talk about conducting safe and adequate operations and theoretically we can revoke a certificate. But section 22 of the Bus Regulatory Reform Act contains a specific provision on this issue. It says that, without regard to subpart 2 of chapter 102 of this title and so on, the Secretary of Transportation and the Commission may suspend the certificate or permit of a motor passenger carrier if the Commission finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.

Now I would like to see that kind of a provision in your bill as well, so that it is very clear that that continuing responsibility is there and notjust in a vague reference to safe and adequate service. I think you could use this language from the bus bill and apply it to the truckers and that would solve the continuing safety fitness problem.

Senator **Danforth**. Thank you very much.

Senator Lautenberg.

OPENING STATEMENT BY SENATOR LAUTENBERG

Senator **Lautenberg**. Thank you, Mr. Chairman.

I would like to make a brief opening statement, if I might, Mr. Chairman. I want to again commend you, as I did at our hearing on drunk and drugged driving on May 26, for conducting these hearings on highway safety.

The focus of today's hearing on truck safety is as timely as your attention to drunk driving. I would like to say, Mr. Chairman, that today I intend to join you and other Senators in support of a resolution urging the adoption of a uniform minimum drinking and alcohol purchasing age of 21. We adopted such a minimum in New Jersey in 1982, and I am hopeful that particularly our neighboring States of New York and Delaware will also do so.

Anyone who has driven on the New Jersey Turnpike understands the need for a truck safety measure. Trucks play an important and expanding role in the transport of our Nation's freight. Congress enhanced this role with the adoption last year of the gas tax bill and of uniform size, weight and width standards, which I am not sure that I totally agree with.

Truck safety is important. The coming trend in passenger transport tends to be toward smaller, more fuel-efficient cars, and when one looks in the rearview mirror of your small, fuel-efficient car to see a heavier, wider, longer and often faster truck coming down the hill behind you, you begin to focus on the issue that confronts us today.

I have had the opportunity to examine some of the testimony to be presented today, and I am anxious to hear what the administration has done or plans to do regarding such issues as truck brake standards and research into truck safety generally.

Mr. Chairman, that is my opening statement—if I might just get into a brief question or two. It looks like we are all sitting around here agreeing with one another that something has to be done. I was interested in your testimony, in particular when you talk about a uniform sharing of information and the availability of direct computer access by the Commission staff to DOT safety data.

If you know anything about my background, you would know that that would immediately trigger a response in me, coming out of the computer business. The problem that we have, I think, in terms of trying to preserve all too often the rights of the individual States and not being able to deal with national problems is one that requires attention and a sharing of information that is essential.

Mr. Taylor, what I did not get out of your testimony was that we are approaching this issue because we all believe that the conditions out there are worsening. I did not hear anything in terms of a statistic that says that with either fatal or injurious accidents we see more and more truck involvement. Is that the case?

We had a horrible accident in Connecticut not too long ago with a truck smashing through a toll gate and killing several people. But do we see an increasing incidence of fatal truck accidents or injurious truck accidents?

Mr. TAYLOR. I do not have any actual figures for any particular point in time, Senator. The Chairman asked that same question—if we had any quantifying numbers to provide. DOT keeps accident reports and records and would probably be in a far better position to specifically answer that question.

I do not think there is any question, but it is a matter of opinion. The accident rate has probably gone up; there seem to be greater dangers. That is why we are interested in it, and, as the Chairman suggested, I could relate a number of anecdotes too, particularly in the bus area, that I think are just terrible disasters.

Senator LAUTENBERG. The thing that concerns me is that as you make your case here, I think we have to persuade those who are interested that this is not just another bureaucratic intrusion but that there is a value to the kind of legislation being proposed.

And then you talk about the example that you do, where the operator considered that fines were simply a cost of doing business. That is all too often the case, and I think that we leave ourselves open to some criticism if we stand on the side of motherhood—if I can use the expression—in terms of safer operation of trucks and buses without making our case.

Each incident gets a fair share of attention, but it is often regionalized unless it is of such mammouth proportion that it is picked up in the national news service. But I think there is a very serious threat, and I am concerned. As you know, New Jersey and Connecticut and other States are trying to ban the larger trucks, the tandem trucks.

We do not feel our roads have the capacity to handle these trucks. Very recently on the Senate floor we got into an unpleasant dispute between Pennsylvania and New Jersey, and each one—well, Pennsylvania certainly is seeking a way out of a problem that they have on the highway that goes north and south along the Delaware River where numerous accidents have occurred.

Pennsylvania's proposal is that the traffic be moved over to New Jersey by banning trucks on that particular section of the highway. Certainly that would not have prevented the kind of injury or fatality that we see coming there, but it would have moved it over to New Jersey, which is certainly not a satisfactory answer for all kinds of reasons, not the least of which is that New Jersey has less satisfactory roads to carry that traffic than Pennsylvania does.

So while we review this problem, I think that we have to be very emphatic about how we make our case and the necessity for taking action. I think your testimony is very good, but I would appreciate—and again it is a bit redundant because the Chairman has already asked for this—receiving data on whether or not the problem is worsening.

Mr. TAYLOR. Well, I think it is. We have roadchecks from time to time. Not long ago, we stopped a group of buses going back and forth between Las Vegas and Los Angeles. We found one that did not even have brakes, and it has got to go down an enormous grade into San Bernadino. Now, in my view that, is inexcusable for an operator of that kind to be allowed to be on the highways, particularly with a bunch of people.

We just had an airplane disaster with Air Canada and everybody is very concerned, as rightfully they should be, about the kind of equipment in the airplane and what happens if it catches fire. But you can take those very same people and put them in a bus out on a highway, where statistically they are actually worse off in terms of exposure to accident, and nobody seems to care that much.

Senator LAUTENBERG. I was most interested in that comment. Is there a higher incidence of fatal accidents per whatever the yardstick is—mile, passenger mile or what have you—than there is in the air?

Mr. TAYLOR. Unfortunately, Senator, I cannot provide that statistic for you, because DOT really has the prime responsibility in this area and they get the accident reports and the statistics. I am sure that could be developed for you through them.

Senator LAUTENBERG. Thank you very much, Mr. Taylor.

Mr. TAYLOR. Thank you, sir.

Senator DANFORTH. I have one more question, Mr. Taylor. Do you have any view about how frequently commercial vehicles should be inspected?

Mr. TAYLOR. Well, I would think certainly at least once a year, and I think an inspection program is absolutely essential. Now again, this is a little bit beyond the pale for us. This would be a DOT responsibility, but I cannot believe that it would be any great burden—we all do it in Virginia with our vehicles—for a truck to be inspected at least once a year. And I think it might even be important that it be done twice a year.

I do not think it has to be a big expensive procedure that is only designed to make money for truck stop operators, so that you put another burden on the trucking industry. I think it could be done on a strictly reasonable basis, and I think it should be done.

We ought to know what is going on with that equipment that is our there, and I do not know a better way to do it. There are not enough people today at DOT or in our agency to have these field checks and stop equipment on the road any more. There is just too much commercial traffic out there.

What do you do about the New Jersey Turnpike? I have been on that road, too, in my little car, and felt totally intimidated with one of those monsters behind me. So I think you have to enforce equipment safety through some sort of inspection program, and I feel very strongly there should be one.

But, again, it is pretty much a DOT proposition.

Senator DANFORTH. But you are in the business of regulating trucking and it would seem to me obvious that the average truck has much more wear and tear on it in a year's time than the average passenger vehicle.

Mr. TAYLOR. I would agree. And so, as I see it, 6 month inspections would not be a problem. Now, in terms of the cost and how many people it would take and the mechanics of how you do it, I think that is DOT's responsibility.

Senator DANFORTH. Everything is a weighing of costs versus benefits, but if there are large numers of cases of trucks operating with, say, inadequate brakes, not to be able to catch that because of saying well it is just too expensive to find it out woud seem to me to be——

Mr. TAYLOR. I think that is trying to put a price on human life, Mr. Chairman, and I do not think you can do that. Somehow or other we should find a way to make sure that trucks are not out on the highways with unsafe brakes, and I think an inspection program is a very good way to approach it. And certainly once a year should be a minimum. I think once every 6 months would be more appropriate, more adequate.

Senator DANFORTH. Thank you very much, sir.

Mr. TAYLOR. Thank you, Mr. Chairman. We appreciate the opportunity to be here.

Senator DANFORTH. Mr. Kenneth Pierson.

STATEMENT OF KENNETH L. PIERSON, DIRECTOR, BUREAU OF MOTOR CARRIER SAFETY, DEPARTMENT OF TRANSPORTATION

Mr. PIERSON. Good morning, Mr. Chairman, members of the committee. The Department of Transportation appreciates the opportunity to appear before the committee and discuss title III of S. 1108, the Motor Carrier Safety Act of 1983.

Trucks and busses traveling in interstate and foreign commerce, including those transporting hazardous materials, are subject to the Federal Motor Carrier Safety Regulations administered by the Department of Transportation. Enforcement of these regulations, however, is constrained due in part to the limited sanctions available for prosecution of violators of safety regulations. This stems in part from the fact that we are dealing with a fairly antiquated statute. The general motor carrier safety authorities are contained in the Motor Carrier Act of 1935, and while the $100 and $200 fines authorized under that act may have been adequate for that day, we believe they are wholly inadequate for this time period.

The Bureau of Motor Carrier Safety of the Department of Transportation appreciates and supports the efforts of this committee to meet truck safety problems and to improve motor carrier safety generally. Title III, in our view, is a positive step forward to improve the safety of the motoring public and those that reside along the highways. Title III is designed to upgrade and improve our authorities and to state the intent of Congress that unsafe trucking operations are unacceptable.

With regard to the substance of the bill, there are a few sections which we believe can be improved upon, for to be exact, and three which we believe may not be necessary. I would like to comment specifically on sections 304, 308, 310, 312, 313, 314, and 315.

With respect to section 304(2)(B), this section defines commercial motor vehicle as one, in addition to trucks, which transports 10 or more passengers, including the driver. In order to conform with other definitions in related acts and, indeed, the Federal motor vehicle regulations which are adopted by some 33 States, we would recommend a definition which covers vehicles transporting more than 15 passengers, including the driver. This would allow for the continued exclusion of vanpools in commuting operations in major cities.

Also, we believe the definition should contain an expemption for schoolbuses when such buses are used in the transportation of schoolchildren, as an activity that is very heavily regulated by the States, and under State schoolbus transportation safety laws and inspection programs, and we have included in our statement some suggested language.

Section 308, Inspections and Warrants, provides that agents of the Secretary have the authority to enter upon and inspect a carrier's records and facilities, and we believe that that should be amended to allow for the copying of records, and in order to have credible cases, it is necessary for us to produce exhibits and evidence, and we do that by the copying of records.

We believe that section 308(a)(2) would place an unnecessary and burdensome requirement on the Department to secure a judicially issued warrant for any entry or administrative inspection. Current procedures which we have operated under for more than 40 years do not require the seeking of judicially issued warrants, and our current practices have not been the subject of litigation or challenge, and we are not aware of any problems with the current procedure which would dictate a neeed for change.

Under section 310, Penalties, that sectiion provides the Department with the penalty authority for violators of sections 305 through 313 of this title. The section is of great interest to us because we believe that the penalties are in dire need of upgrading and standardization. Accordingly, we recommend that this section be amended to read as the attachment to the formal statement proposes.

The attached draft language would provide the Department with broad civil penalty authority for all violations of motor carrier safety regulations by all persons subject to the act. Under current statutes, we have one set of authorities under for-hire motor carriers authorized by the Interstate Commerce Commission, which constitute about 10 percent of the carriers of record, and we have another set of authorities for private carriers.

With respect to section 311, the Department of Justice provided you views and the Department supports those views.

With respect to State regulations, we would request that the Secretary be given the authority to determine inconsistencies. The present wording is unclear on who would determine when there is an inconsistency between a State rule and a Federal requirement.

With respect to annual inspections, we do not believe that annual inspections of commercial vehicles would be of any substantive value. The cost of removing every commercial vehicle from service for 1 day would be significant since the act would cover in excess of 8 million vehicles. The existing system where carriers are required by law to maintain and systematically service and maintain their vehicles and to prove that maintenance by record systems, where drivers are required to pretrip inspect and posttrip inspect and report defects and, where the goverment is only involved by unannounced roadside inspections to test the stewardship of the companies, and that mandatory inspection system we believe would be less burdensome both from the cost point of view and from the reporting point of view.

So we recommend the deleting of section 313 in its entirety.

In terms of section 314, that section requires the Secretary and the Interstate Commerce Commission to jointly establish a procedure to determine the safety fitness of new authority applicants. Safety fitness ratings are provided by the Department of Transportation to the Interstate Commerce Commission at the present time. We believe that this section is not needed.

With respect to heavy truck research, we would only ask that, or recommend that, you add "of driver's compartments" after the words "crashworthiness" in order that it make it clear that the crashworthiness refers to the driver's compartment and not the cargo tanks or trailers which are covered under other statutes.

Mr. Chairman, that completes my statement, and I will be pleased to respond to any questions you might have.

[The attachment referred to follows:]

Section 310(a). Section 507 of title 49, United States Code, is amended (1) by adding the following new subsection after subsection (b):

"(c) The Attorney General, at the request of the Secretary, may bring an action in a appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this title, or an order or regulation issued under this title. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunction reflief, interim equitable relief, and punitive damages,"; and

(2) by redesigning subsections (c) and (d) as subsections (d) and (e).

(b) Section 521(b) of title 49, United States Code, is amended to read:

"(1) If the Secretary finds that a violation of this title or a violation of a regulation issued under this title or of any other regulation issued by the Department of Transportation has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall specify the proposed civil penalty, if any, and specify the actions which the Secretary proposes to be taken in order to avoid subsequent similar violations. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of his intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5, United States Code, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

"(2) Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of this title or a regulation issued under this title or a violation of any other regulation issued by the Department of Transportation or who causes a violation to be committed, shall be liable to the United States for a civil penalty not to exceed $2,500 for each offense. If the Secretary determines that a safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, he may assess a civil penalty not to exceed $10,000 for each offense. Each day of a violation shall constitute a separate offense. The amount of any such penalty shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require.

"(3) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary.

"(4) If, upon inspection or investigation, the Secretary determines that a violation, or combination of violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service or order an employer to cease all or part of his commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that reasonably required to abate the hazard. Subsequent to the issuance of such order, opportunity to review shall be provided in accordance with section 554 of title 5, United States Code, except that such review occur not later than 10 days following issuance of such order.

"(5) Any person who knowingly and willfully violates any provision of this title or a regulation issued under this title or any other regulation issued by the Department of Transportation shall, upon conviction, be subject for each offense to a fine not to exceed $10,000 or imprisonment for a term not to exceed 1 year, or both: Provided, howerer, That if such violator is an employee he shall only be liable, upon conviction, for a fine not to exceed $2,500.

"(6) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where he has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were supported by substantial evidence, or otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable ground existed for failure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

"(7) All penalties and fines imposed under this section shall be deposited into the Treasury as miscellaneous receipts.

"(8) In any action brought under this section, process may be served without regard to the territorial limits of the district of the State in which the action is brought.

"(9) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules Criminal Procedure.".

Senator **Danforth**. Thank you very much.

Does the Department have statistics with respect to truck safety?

Mr. **Pierson**. Yes, sir, we have two sets of statistics. One, we have national statistics which are reported by the States to the National Highway Traffic Safety Administration's Center for Statistical Analysis. The Bureau of Motor Carrier Safety has an industry-reporting requirement which generates accident statistics for interstate carriers. It does not include intrastate carriers and therefore is a subset of the national figures which are generated by the States and furnished to NHTSA.

Senator DANFORTH. A lot of us perceive that there is a problem in truck safety. What could you tell us to flesh out that perception?

Mr. PIERSON. Well, frankly, the statistics indicate a continued trend of improvement. For calendar years 1980, 1981, and 1982, accidents reported to the Bureau and accident ratios in terms of millions of miles of operations have shown improvement, and this in the face of a weak economy in which the annual mileage in the trucking industry has not declined while there were more carriers chasing less freight. So while we are heartened by these trends of improvement, the overall record is still unacceptable, and we believe that we need the improvements that your bill would authorize.

Senator DANFORTH. Could you provide us for the record some kind of statistical analysis, and I am not sure what kind of analysis would be helpful, frankly, but I do think that what we need, if we are going to put together some legislation, is some kind of a statement by DOT of the extent of the problem—number of deaths and injuries.

Mr. PIERSON. Yes, we will be pleased to provide something for the record.[1]

Senator DANFORTH. Now, you think the safety fitness requirements should be deleted, that we should just stick with current law on safety fitness; is that right?

Mr. PIERSON. Well, the Department of Transportation and the Interstate Commerce Commission currently operate under the terms of the Department of Transportation Act, and under the procedures established by a recently negotiated memorandum of agreement, we indeed to report to the Interstate Commerce Commisssion on the safety fitness of carriers in excess of 20,000 times each year. So we believe that, as the chairman had indicated, the gap is obviously the new entrants upon which we have no records, and so we must report to the Commission in those cases that we have insufficient information upon which to base a safety fitness determination.

But our belief is that the State grant program authorized by section 402 of the Surface Transportation Assistance Act, which provides for $150 million over the next 5 years, will result in at least a doubling of the State inspection forces. Our plan is to tie those State inspections into our current motor carrier management information system so that we would be able to get a readout on almost any operator over time.

Senator DANFORTH. All right.

And with respect to annual inspection, again, your position is that it's just not helpful.

Do you think any inspection, other than the present kind of honor-system approach, is important or is this just undue paperwork? We do not want anybody to do any undue paperwork.

Mr. PIERSON. Our preliminary indications are that a tractor-trailer on the average costs about $100 a day if you were to rent one from a rentai company, a straight truck on the order of $50 a day.

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[1] The material referred to has been retained in the Committee files.

We estimate there are 1.2 million tractor-trailer units and on the order of 7.6 million straight trucks operating in commerce. That includes both interstate and intrastate commerce. If those vehicles had to be out of service for a day to schedule for the State inspection, the cost could be as high as $500 million a year.

Now, on the other hand, if the fleets were authorized to perform inspections, that would still only take care of something on the order of one-third of the vehicles out there. The rest of them are operated by sole proprietors and very small operators who would not have the facilities, in many cases not even the knowledge to be self-inspectors.

So we believe that the requirement would almost certainly require State inspections, and those who live in Virginia understand about scheduling in and waiting in line to get automobiles inspected. And if you could transfer that to trucks, you will get an implication of the order of magnitude of the problem we are talking about.

Senator DANFORTH. Laissez faire is what you believe.

Mr. PIERSON. No sir, we believe that the driver pretrip inspection, the driver posttrip reporting is an extremely effective mechanism because the driver is in the best position to know whether the vehicle is safe or not. We believe that requiring the carriers to have maintenance systems that require systematic inspection, maintenance separate and apart from the driver's inspection has been workable over the years.

Senator DANFORTH. You just think it is baloney, all of these stories about trucks with brakes that do not work and buses with brakes that do not work, and that is just myth?

Mr. PIERSON. No, sir, that is not a myth. Certainly we investigate in depth several hundred of these accidents a year and we get on the order of 30,000 truck-reported accidents a year. There is no question that those are happening. On the other hand, it would be a mistake, I think, to attribute 100 percent of the accidents to mechanical conditions.

Senator DANFORTH. Nobody is attributing 100 percent of the accidents to mechanical conditions. It is clear that drivers who are too tired and drivers who have been using drugs, drivers who have been drinking, there are all kinds of problems, the way in which the cabs are built. I mean, there are just a variety of problems that have to be considered.

But would we put up in air transportation with planes that just very occasionally malfunctioned, I mean, maybe only 20 percent of plane crashes are caused by malfunctioning equipment. Would we put up with that?

Mr. PIERSON. No, sir, we would not, but I would suggest our experience from the four demonstration States in which the Department funded stepped-up State enforcement and inspections over a 3-year period probably made the largest quantum reduction in truck-involved accidents than anything the Department or its predecessor activity at the ICC had ever done. The average reduction in truck involvements was on the order of 35 percent in those four States. Unfortunately, when the demonstration funds ran out, those States, reverted back to their previous level of funding, and so we believe that the new motor carrier safety grant program authorized by the Surface Transportation Assistance Act and funded out of the trust fund will make available to the 50 States the kind of opportunity that we had under the demonstration program.

Senator **Danforth**. I am not familiar with the demonstration program.

Mr. **Pierson**. All right, sir. The demonstration program was a program under contract in which Idaho, Michigan, Utah, and Alaska received on the order of $1 million per State to expand their State inspection program on roadside inspections to cover both interstate and intrastate carriers, and that program lasted for 3 years, and as all contracts or all demonstrations, it had a beginning and an end.

Senator **Danforth**. This was roadside inspections?

Mr. **Pierson**. Yes, sir.

Senator **Danforth**. Hit or miss.

Mr. **Pierson**. The point is that there was sufficient inspection activity going on in the State that the trucking industry perceived in those States that those were tough States and you either had to be right or go around them. So if we have 50 States with the perception by the industry that they are tough inspection States, then the industry will in fact maintain and equip those vehicles to avoid being stopped, inspected, and impounded on the roadside.

Senator **Danforth**. Well, it seems to me to be a little bit hit or miss. In States that have passenger automobile safety inspections, is that a waste of money on their part, and a waste of time?

Mr. **Pierson**. Well, the automobile responsibility is that of another agency. My understanding is that there have been some serious questions raised about the efficacy of those programs.

Senator **Danforth**. Well, Mr. Pierson, thank you very much.

Let me say that I understand the Adam Smith neck tie syndrome of this administration, and I think there is a lot to be said for it, but I also thought I understood the commitment of the Secretary of Transportation to safety, and my hope is that we could work with the Department to try to make some meaningful steps forward in safety.

I am a little bit dismayed by the testimony today, but maybe if the Department could just make sure that it has its position firmly in mind, then we could pursue some further discussions on it.

I think that fitness requirements and inspection are pretty close to the heart of what we want to do with respect to truck safety, and I cannot imagine that the bill would have very much to offer the public if we were to say oh, no, we do not want to do that anymore. We do not want any inspection because it is just too expensive to get your truck inspected. That just seems to me to be a little bit of an outrageous position to take.

But I have not given up yet, and I am not going to engage in an exchange, and my view is to try to work things out with the administration. But I would hope that the administration would be a little bit forthcoming with respect to the intent of this bill and not just to systematically shoot at major provisions in it.

Mr. **Pierson**. Mr. Chairman, I am sure the Secretary would be pleased to have additional conversations with you, and we will work with your staff and find some more neutral ground.

Senator **Danforth**. Thank you very much.

Mr. Pierson. Thank you, sir.

[The following information was subsequently received for the record:]

Questions of the Committee and the Answers Thereto

Question. What do you consider to be the major health hazards to which commercial vehicle drivers exposed in their jobs? Do you think the study proposed in S. 1108 will help identify remedies to mitigate these health risks?

Answer. There was a study performed in 1979 for the Federal Highway Administration's Bureau of Motor Carrier Safety entitled "Analysis of Personal Injury and Illness Hazards Associated With Working, In, On, or About Commercial Motor Vehicles." The study reviewed a data base of 68,400 injury/illness cases from 17 States and 4 large motor carriers. The data was for the calendar year 1977. The major injury/illness hazards were identified as follows:

Motor vehicle accidents accounted for 7.7 percent of the personal injuries in the trucking industry.

Overexertion accidents accounted for 21 percent of the personal injuries in the trucking industry. (Strains from excessive physical effort)

Struck by accidents accounted for 20 percent of the personal injuries in the trucking industry.

Falls accounted for 18 percent of all cases studied.

Caught in, under or between accidents accounted for 8.4 percent of the cases studied.

The Federal Highway Administration's Bureau of Motor Carrier Safety currently is involved in a 2½-year research study entitled "Voluntary Employee Injury/Illness Reporting System (VEIIRS)." The data obtained from the injuries and illnesses of 40,000 employees over an 18 month period indicate the major injury/illness hazards to be as follows:

Motor vehicle accidents accounted for 5.7 percent of all reported accidents.

Falls accounted for 28.3 percent of all reported accidents.

Overexertion accidents accounted for 25.1 percent of all reported accidents.

Struck by accidents accounted for 15.1 percent of all reported accidents.

Struck against accidents accounted for 12.1 percent of all reported accidents.

Caught in, under or between accidents accounted for 4.4 percent of all reported accidents.

The study of health hazards to which employees engaged in the operation of commercial motor vehicles are exposed (section 306(d)) will no doubt be a very worthwhile effort since the proposal directs attention to the employee and the problems facing the employee during work hours. If the proposed study addresses causal factors, proximate cause, agency and exposure rather than just empirical data, we are confident that remedies will be identified that will mitigate the health risks of employees.

Question. Please describe the present procedures for determining the safety fitness of motor carrier applicants. What weaknesses exist in the procedure?

Answer. Motor Carrier Safety ratings are assigned in accordance with procedures contained in Title 49, Code of Federal Regulations, Part 385. This rule, which became effective on July 19, 1982, specifies that the following information will be taken into consideration when assigning an overall safety rating to a motor carrier's operations:

(a) Violations discovered during the course of safety management aduits of the carrier's operations.

(b) Violations discovered during the course of driver/vehicle roadside inspections.

(c) The carrier's improvement or lack of improvement over previous safety management audits and/or roadside inspections.

(d) Federal violations involving the falsification of required safety records.

(e) Federal violations involving the failure to submit required records or reports.

(f) Recommendations of the Federal Highway Administration's Motor Carrier Safety field staff based upon their consideration of the above factors.

(g) The motor carrier's accident record.

(h) Violations of State safety-related requirements that are similar to Federal safety requirements.

In assigning a safety rating, the Bureau of Motor Carrier Safety uses data which is available from the Bureau's Management Information System which enables the comparison of a given carrier's safety performance, expressed as noncompliance and accident rates, with similar carriers by size and type of operation.

The Bureau of Motor Carrier Safety has allowed the headquarters and Regional Offices of the Interstate Commerce Commission access to the management Information System and this system has the capability of allowing instant access and transmission of motor carrier safety ratings for carriers seeking new or additional operating authority from the Interestate Commerce Commission.

We have now had one year's experience with this system, and our overall evaluation of the rating procedure and the methods in place for transmitting final ratings indicates to us that the system is working very well.

The safety ratings rule provides a method whereby a carrier can appeal a safety rating. This has occurred four times, for the 5,000 ratings that have been assigned since the rule became effective. In all four instances the rating that was assigned, and the records used to assign that rating, were not questioned. The carriers stated in their requests for reconsideration that changes in their operations had been instituted since the assignment of an adverse rating which would ameliorate the circumstances which caused the violations to occur.

As is the case with any system which is computerized, after the system is debugged and operational, the principal weakness is not with the system, but with the personnel who are using it. The principal weakness with the system, in our view, is that we cannot in all cases guarantee that the system users will follow established procedures. If established procedures are not followed, there is always the possibility that an error will occur.

Question. Do you believe motor carriers are capable of conducting self-inspections, if licensed by a State inspection agency in lieu of submitting to a State inspection as would be required by S. 1108?

Answer. Section 313 would require every commercial vehicle to be subject to an annual inspection. We do not believe this would be of any substantive value. The cost of removing every commercial vehicle from service for 1 day would be significant, since in excess of 8 million vehicles would be involved. The State reporting requirement could be burdensome. We do not believe an annual inspection would be an effective safeguard against the use of defective equipment on the highways, given the high mileage of these vehicles. Of the 200,000 carriers of record, only a few thousand are sufficiently large to have their own shops and qualified inspection personnel. Most carriers of record are sole proprietors or very small businesses and would have to rely on vendors for inspection and repair services. A system of qualifying outside shops would only further enlarge the regulatory scope. The existing system of mandatory pretrip driver inspection, mandatory carrier inspection, and Federal and State spot checks by unannounced road checks is clearly preferable for commercial vehicles in our view.

Question. You state in your testimony that DOT believes that an annual inspection requirement for commercial motor vehicles would not be of any substantive value. Upon what do you base your estimate that an annual inspection as specified in S. 1108 would not be effective or cost beneficial?

Answer. Section 313 would require each motor vehicle to pass an annual inspection. An annual inspection would insure that the vehicle inspected and passed is in safe operating condition on the day of inspection only. Commercial motor vehicles are high mileage, high use vehicles that require daily inspection to insure a safe operating condition while on the public highways. The current inspection and maintenance regulations (49 CFR 396) require daily inspection and daily maintenance if necessary. The rules provide for a daily verification of the inspection and maintenance performed. The verification is performed by each driver before he/she operates the vehicle. The verification is also made at roadside checks made by either State or Federal enforcement officials. At the present time there are 12 western States and 3 Canadian Provinces that comprise the Commercial Vehicle Safety Alliance (CVSA). The CVSA does not recognize periodic vehicle inspections such as the one proposed in section 313.

Estimated costs attributable to the proposed annual inspection requirement can be drawn by using figures contained in the Federal Highway Administration's "Highway Cost Allocation Study," published in May 1982. The study used 1977 statistics and projected those statistics to reflect 1982 conditions. Based on those 1982 projections, there is a potential of approximately 15 million commercial motor vehicles that could be subject to the proposed inspection requirement. Using the figure of 8 million vehicles that was used in the original testimony, the following cost estimates are presented.

	Millions
Inspection time (tractor-trailer combination or 3-axle truck): 2 hours × $30 per hour (national average) (2 hours × $30 × 8,000,000 vehicles)	$480

	Millions
Motor carrier time spent obtaining vehicle inspection (includes time going to, time at, and time returning from inspection site). Labor cost predicted on average wages of a hostler—$10 per hour) (4 hours × $108,000,000 vehicles)	320
Lost revenue per inspection. (It can be safely assumed that the motor carrier will lose 10 hours productivity per vehicle. A vehicle can easily travel 450 miles during a 10-hour period. ATA and ICC statistics for 1981 indicate revenue per mile per vehicle was $1.87.) (450 miles × $1.87 × 8,000,000 vehicles)	6,732
Total per year	7,532

At the present time, and on such short notice we are unable to estimate the last expense item (disruption of trade). Disruption of trade (i.e. motor carrier's ability to operate at peak efficiency) would most probably be as much or more than the costs set forth above.

Question. Why do you believe warrantless inspections are preferable to use of administrative inspection warrants?

Answer. The BMCS draws its authority to conduct warrantless inspections of the records and premises of interstate commercial carriers from sec. 220(d) of the Interstate Commerce Act of 1935, recently recodified as 49 U.S.C. 504, and sec. 109 of the Hazardous Materials Transportation Act, 49 U.S.C. 1808. In interpreting these sections, the U.S. Supreme Court and the inferior Federal Courts have consistently upheld the constitutionality of warrantless inspections. The Fourth Amendment guarantees against warrantless searches do not apply to federally regulated motor carriers who are subject to the highest degree of accountability to the public. The Fourth Amendment protections are based on an expectation of privacy, and the Courts have traditionally held that pervasively regulated businesses can rely on no such expectation because they are well aware of the history of close government oversight.

Section 308(a)(2), notwithstanding the judicial recognition of the inapplicability of the Fourth Amendment warrant requirements, would impose the burden of securing a warrant in advance of all routine inspections, and subject this practice which has been generally accepted in the trucking industry to the voluminous case law on the issue of search and seizure.

At present, inspections are triggered by, among other things, a carrier's accident or regulatory compliance experience which manifests a safety problem. Rarely are terminal inspections specifically targeted at criminal or civil prosecutions. Consequently, the degree of articulation of the suspected conduct necessary to support "probable cause" in the case law dealing with Fourth Amendment protections against search and seizure would be difficult to achieve in routine safety audits of carrier facilities. Moreover, if the requirements for a warrant extend to routine roadside inspection, a warrant could never be issued in advance because the inspector would never be able to particularly describe the place to be searched or the thing to be seized. Vehicles are selected, often at random, from the stream of traffic. If inspection reveals violations that present an imminent hazard, the vehicles are placed out-of-service, or impounded, until necessary repairs are made.

The warrant provision, in addition to imposing a substantial procedural burden on our field staff, would eventually require us to forego activities which are currently the most effective in promoting compliance with safety regulations. With the need to act only on advance information of possible regulatory noncompliance in order to convince a magistrate that a warrant should issue, our efforts would become predominantly reactionary and the prevention factor would be sacrificed.

Sec. 308(a)(2)(A)(v) provides an exception to the warrant requirement "in any other situation where a warrant is not constitutionally required." Since existing legal precedents have established that warrants are not required to carry out the functions authorized under 49 U.S.C. 504 and 49 U.S.C. 1808, it follows that in no case would a warrant be constitutionally required. Consequently, the warrant provision would have no effect.

Question. Do you believe there is a need for heavy truck research?

Answer. The criticality of heavy truck research becomes evident when one considers the projections for heavy truck registrations and miles travelled. It is estimated that by 1990 the number of heavy trucks will have increased by 13 percent and their vehicle miles travelled by 29 percent. The increased number and travel by heavy trucks could have a detrimental effect on highway safety. As volume to capacity ratios on major arterials as well as lesser roadways rise with increased heavy truck and other vehicle travel, so too will the probability of encounter and collision among vehicles as driving becomes more difficult in heavier traffic streams.

Also, recent legislation permitting the operation of larger trucks on highways has focused public attention on the heavy truck safety issue. Trucks are becoming increasingly larger, while by the mid-1980's smaller and lighter cars are expected to become the majority of the car population. Moreover, the type of accidents in which most persons were killed has changed from single-vehicle accidents in the 1950's to multiple-vehicle accidents. The increasing likelihood of collisions between smaller vehicles and heavier vehicles will contribute to an increased risk to occupants of smaller cars. This point is proven by 1980 FARS data that indicates when a passenger car is involved in a fatal accident with a large truck, the car occupant is 29 times more likely to be killed than the truck occupant.

It is through research and development efforts that we will achieve a better understanding of the complex heavy-truck accident problem and develop effective countermeasures. The heavy-truck accident problem will not be easily solved. There is no single solution which, if implemented, would guarantee alteration of the truck accident problem. However, there are areas which the greatest probability exists of reducing the number of heavy truck accidents and their consequences. Research efforts relating to such areas as, braking systems, truck driver qualifications, truck stability, and accident and exposure data collection will provide us with information that could improve the safety of heavy trucks in the future.

Question. Is the accident record of heavy trucks such that remedial legislation is required?

Answer. Based upon the data that is available, the Bureau of Motor Carrier Safety does not feel that the accident "record" of large commercial vehicles warrants any extension remedial legislation, other than some changes to S. 1108 which I believe are necessary. Our suggestions appear elsewhere on this record.

The Bureau of Motor Carrier Safety maintains extensive data concerning accidents involving the motor carrier population subject to its jurisdiction, and in determining a given motor carrier's accident "record", or the accident "record" of the interstate motor carrier population, the Bureau uses four measurements dealing with accident frequency and severity. These measurements are:

(a) Accident frequency, expressed as the number of reportable accidents per million vehicle miles.

(b) Accident severity, expressed as: (1) The number of fatalities per 100 million vehicle miles. (2) The number of personal injuries per million vehicle miles. (3) The amount of property damage per million vehicle miles.

Data concerning accidents involving motor carriers subject to Bureau of Motor Carrier Safety jurisdiction is, of course, a "subset" of accident information involving all heavy commercial vehicles and all other vehicles, and in many cases mileage, or exposure, information must of necessity be based upon whatever data is available.

In calendar 1981, according to the Federal Highway Administration's "Highway Statistics" report and the National Highway Traffic Safety Administration's "National Accident Sampling System" report, the number of accidents per million vehicle miles of travel was 4.99 for passenger cars, while the accident frequency rate for combination trucks was 3.84 accidents per million vehicle miles of travel.

Data available to the Bureau of Motor Carrier Safety for the same period indicates that the accident frequency rate for interstate motor carriers was 1.62 reportable accidents per million vehicle miles of travel. The difference between the national statistics and the Bureau of Motor Carrier Safety statistics is attributable to the fact that the Bureau collects data only on those accidents which result in a death, a personal injury, or aggregate property damage in excess of $2,000.

Question. In your testimony, you advocate amending the definitions contained in Title III of S. 1108 to exclude vanpool vehicles and school buses used to transport school children to and from school or school events. In a recent Louisville, Ky. *Courier-Journal* article, however, you are quoted as saying you would like to see the federal regulations broadened to cover all interstate carriers. How do you reconcile these two statements?

Answer. School buses used to transport school children to and from school or school events and vanpool vehicles used to transport people to and from their places of employment are normally used in an area in close proximity to the school, home or workplace. Additionally, these types of transportation are generally intrastate in nature. School buses and their operation are generally regulated by the various States and are overseen by various boards of education. The school buses are generally maintained to some degree on a current basis and the drivers are normally State qualified. These two types of operations cannot be placed in the same category with buses used in charter operations. Charter operations conducted by for-hire motor carriers are now subject to the Department's regulations. Charter operations conducted by other entities are presently classified as "private carriage of passengers" and are not subject to Federal safety regulations. The *Courier-Journal* article cites only one of the many documented instances where passengers are being transported in an unsafe vehicle driven by an unqualified driver. It is our desire to protect the passengers of those type vehicles from being injured or killed and to protect the other users of the highways from the same fate. Since a large percentage of all charter operations involve interstate transportation, it is in the best interests of public safety to include those charter operations under the Federal regulatory umbrella. To this end, we are presently seeking regulatory authority over the private carriage of passengers in interstate or foreign commerce. The authority sought through legislative remedy would not be accompanied by any type of paperwork or recordkeeping burden.

Senator **Danforth**. Mr. Sterns?

STATEMENT OF LAWRENCE STERN, CHAIRMAN, SAFETY COMMITTEE, AMERICAN TRUCK ASSOCIATIONS, INC., ACCOMPANIED BY WILLIAM JOHNS, MANAGING DIRECTOR, TECHNICAL SERVICES DIVISION

Mr. **Stern**. Mr. Chairman and members of the committee, my name is Larry Stern, and I am testifying for American Trucking Associations, Inc., also known as ATA, as the chairman of its Safety and Engineering Policy Committee.

ATA is a national association for the trucking industry, representing all types of motor carriers with affiliated associations in every State and the District of Columbia. I am also vice president-at-large of ATA and president of Stern Transport, inc., an interstate common carrier with headquarters in New Jersey.

With me today is William Johns, managing director of the ATA Technical Services Division. Several members of the ATA Safety and Engineering Policy Committee are also in attendance. They are a special subcommittee formed to consider the provisions of title III in S. 1108. Tomorrow the ATA executive committee will hold it regular summer meeting and formalize our position on S. 1108. There will probably be amendments to our position, and if so, we will file a statement for the record to supplement the detailed written comments that ATA submitted in advance of this hearing.

In my appearnace before this same committee in 1979, I informed the members about the safety programs of the trucking industry, and I also discussed the industry's safety record. I am pleased to advise you that our programs are still strong. Our safety record has improved considerably. According to the Fatal Accident Report System of DOT, from 1979 to 1981, the number of deaths of occupants of heavy trucks dropped from 1,087, to 896, a 17 percent improvement. In that same time period, the number of car occupant fatalities that resulted from crashes in which heavy trucks were involved—but not necessarily at fault—declined from 2,359 to 1,777, a 25-percent improvement.

Despite the improvements, we recognize that additional legislative controls are needed to reach motor carriers and drivers who are not currently subject to Federal safety regulations or who cannot be made to comply with regulations and traffic laws.

ATA firmly believes that most truckdrivers have excellent safety records and make every effort to comply with safety regulations and traffic laws. Yet, there are some truckdrivers in the industry who speed, tailgate, make unsafe lane changes, and in general do not show respect for traffic laws. We believe it is imperative that legislation be enacted for better control of human factors that cause accidents. Most accidents caused by trucks result from human error, not from defective vehicles.

Federal studies and Federal data shows that truck defects are the cause in only 5 to 10 percent of the truck-related accidents.

Senator DANFORTH. How many accidents would that be a year, sir?

Mr. JOHNS. I think that reported to the Bureau of Motor Carrier Safety, that is approximately 33,000.

Senator DANFORTH. 33,000 accidents a year caused by defects?

Mr. JOHNS. No, that would be the total number of accidents reported to the Bureau, and 5 to 10 percent of those would be a result of vehicle defect.

Senator DANFORTH. Say 2,000 or 3,000?

Mr. JOHNS. 2,000 or 3,000.

Mr. STERN. Yet the Government is spending more money and manpower on vehicle safety than on driver control.

We urge that S. 1108 be amended to provide direction and authority from the Congress to the Secretary of Transportation to promote improved compliance with traffic laws by those drivers of trucks who are creating problems.

Senator DANFORTH. Could you excuse me, Mr. Stern? I have just had it called to my attention—I was not watching the clock—that there is a vote on the floor of the Senate. So I am going to have to leave you.

I will be back in about 15 minutes.

[Recess.]

Senator DANFORTH. Mr. Stern, thank you very much for your patience. Please continue.

Mr. STERN. Despite the fact that truck defects are not the primary cause of accidents, ATA is a supporter of roadside inspections, and we strongly recommend that the Federal Government provide support for an increase in the number and quality of roadside inspection programs in the States. They are a highly effective means of monitoring the condition of both drivers and vehicles. They allow monitoring of the maintenance practices of individual motor carriers and of the trucking industry as a whole. Most importantly, they are an effective program for removing from service those drivers and those vehicles that are unfit.

Roadside inspections are especially beneficial for high-mileage vehicles and drivers who operate long distance from their home bases. There is no other inspection program of Government agencies as effective for high-mileage vehicles; no other Government inspection program provides such high benefits and low cost per vehicle inspected.

Mr. Chairman, ATA has suggested numerous changes that we believe are needed to make the Motor Carrier Safety Act more effective and practical. Among these is our recommendation that the act be clarified to show the intent that DOT has primary authority for protection of safety and health of truck employees. If DOT's jurisdiction is not clearly defined, the trucking industry will be subject to dual sets of regulations and controls, and there will be conflicts of effort between DOT and other Federal agencies.

We urge also that the Secretary be required to make cost-benefit determinations in all rulemaking activities, not just in revising regulations.

We also urge reconsideration of the matter of civil penalties for violations. I expect that ATA will file supplemental comments on this matter. Most truck operators strongly oppose the civil penalities system because it assumes a person is guilty until proven innocent. It focuses on the truck operators who are most visible in making the best efforts for safety, and it places the agency which imposed the penalties in the role of enforcement officer and judge.

Mr. Chairman, I will be happy to attempt to answer any questions that the committee members might have, or provide additional information for the record that is needed by the committee and its staff.

Thank you very much.

Senator DANFORTH. Thank you, Mr. Stern.

Your position is that 90 to 95 percent of the accidents are human factor rather than equipment caused accidents.

Within that 90 to 95 percent, what would be the leading causes of human factor accidents? I mean, would it be drunk driving, drugged driving? Would it be drivers who have been on the road too long, or can you gage that?

Mr. STERN. I think Mr. Johns, who is director of our Technical Services, probably would be better equipped to give that statistical answer.

Mr. JOHNS. Mr. Chairman, I do not believe that 90 to 95 percent of the truck accidents are caused by the driver. I think there are some caused by operating conditions in addition to the vehicle defect. It is very difficult to state to what extent the human factor is the cause.

There have been estimates in a range of 60 to 90 percent. The truckdriver has an excellent record based upon studies and accident reports concerning the nonuse of drugs and alcohol. There are, of course, some drivers who do use alcohol. There are some who do use drugs. But on the whole, they have been shown by studies and by the accident data to have good records.

There are many accidents which are caused by drivers exceeding the hours of service regulations and becoming fatigued. But there are also many accidents which obviously are a result of a driver having a poor attitude, tailgating the public, cutting people off, speeding, and engaging in other similar unsafe practices.

If you listen to some of the CB conversation on the radio, it is obvious that there are some drivers out there who do not have a good attitude, who are violating the laws, and who should be removed from the highways. We have many truckdrivers who would welcome removal of unsafe truckdrivers who are concerned themselves.

Senator DANFORTH. How should we focus on them?

Mr. JOHNS. We believe that the State enforcement agencies need more help in enforcing traffic laws, and we have recommended that the study of vehicle crashworthiness, handling, stability, things of that nature, be broadened to include a study of human factors as they contribute to accident causation to determine the extent to which drivers do not comply with regulations and traffic laws, and why they do not comply, and also to determine the needs of the enforcement agencies to improve their capability for enforcing traffic laws.

Senator **Danforth**. Gentlemen, thank you very much.

[The statement follows:]

Statement of American Trucking Associations, Inc.

American Trucking Associations, Inc., presents the following comments in general support of the "Motor Carrier Safety Act of 1983." We believe, however, that certain amendments are necessary to assure that the important objective of improved motor carrier safety can be achieved in an efficient manner and with the least burden for the benefit of the public, motor carrier employees and motor carrier employers.

A. GENERAL COMMENTS

ATA is pleased to have had the opportunity to work closely with the Senate and its staff over a period of several years in the development of motor carrier safety legislation.

As a result of such joint efforts, combined with those of other interest groups, laws exist today which improve the availability of driver record information to employers, and which promote uniformity of motor carrier rules and regulations among the several states, thereby making it easier for motor carriers and their employees to know and comply with such rules and regulations.

The trucking industry is proud that in recent years there has been improvement in the heavy truck safety record, according to statistics from the Fatal Accident Report System of the National Highway Traffic Safety Administration. The number of truck occupant fatalities has decreased by 17 percent from 1,087 in 1979 to 896 in 1981. The number of car occupant fatalities resulting from heavy truck related accidents decreased from 2,359 in 1979 to 1,777 in 1981, an 25 percent improvement.

Our industry recognizes that legislation is needed to further improve the record, through controls to reach those motor carriers and drivers who are not currently subject to federal safety regulations, or who cannot be made comply with regulations and traffic laws because of the limited enforcement capabilities of the Bureau of Motor Carrier Safety and state agencies.

ATA firmly believes that most truck drivers have excellent safety records and make every effort to comply with regulations and traffic laws. However, we believe it is imperative that legislation be enacted for better control of the human factors that cause accidents because most accidents caused by trucks results from human error, not from defective vehicles. Federal studies and federal data show that truck defects are the cause in only 5 to 10 percent of the truck-related accidents. Yet the federal government is now devoting most of its money and manpower to promote vehicle safety and therefore has little hope of effectuating a major reduction in truck accident experience. In order to improve truck safety, the government needs to refocus its efforts on elimination of human error and other human factors which cause truck accidents.

Our proposed amendments herein include a recommendation that the federal government promote improved compliance with traffic laws by drivers of trucks. We urge that the Congress provide direction and authority to the Secretary for that purpose, and that there be a study to determine the extent to which drivers do not comply with traffic laws. The study should determine the extent to which state agencies responsible for traffic law enforcement may need assistance from the federal government.

We have also recommended herein that the federal government provide support for an increase in number and quality of roadside inspection programs of the states. The roadside inspection is an excellent tool for improved motor carrier safety because it allows enforcement officials to monitor the condition of truck drivers as well as the condition of the vehicles they drive. It is the most effective system available for detecting unfit drivers and vehicles and for removing them from the highways.

We have expressed the view, in our proposed amendments, that S. 1108 needs revision to remove the potential for jurisdictional disputes among federal agencies that may be the unintentional result of the language of this Act. The trucking industry has long borne the brunt of conflicts and duplicative activity between the U.S. Department of Transportation and the Occupational Safety and Health Administration. Hopefully, the Senate will accept our recommended revisions to help resolve such problems rather than aggravate them.

We wish to reiterate our past position that there is need for a major change in the government's system of truck accident data collection so that the frequency and cause of such accidents can be determined and used to guide the safety efforts of government and industry. There is a need to have better information about exposure of trucks to accidents according to such factors as mileages traveled, in relation to weather conditions, types of highways, and visibility. For several years, ATA, the Motor Vehicle Manufacturers Association and the Western Highway Institute have sponsored truck accident data collection efforts of the University of Michigan Transportation Research Institute. We would welcome co-sponsorship by the Department of Transportation. Such participation is urgently needed to improve the data collection system for better information about truck accident experience.

At past hearings of the Senate Committee on Commerce, Science, and Transportation, ATA has provided detailed information about trucking industry safety programs and safety records. We are proud of our accomplishments in the field of safety and of our continuing support for state and federal safety efforts, including the 55-mph national speed limit. If additional information about trucking industry safety efforts is desired by the Senate or its staff, ATA will be most willing to furnish it.

I88b. recommended changes

The "Motor Carrier Safety Act of 1983" can be more effective in promoting safety of commercial vehicle operations if the following changes are adopted. These changes are necessary to protect the safety of the public, to avoid confusion in the administration of the Act, and to avoid the imposition of undue burdens on employers in commercial vehicle operations.

1. Clarify the intent of the legislation that the Secretary of Transportation has primary authority for protection of the safety and health of employees

ATA proposes that Section 302 of S. 1108 be revised to make clear that the purpose of the Act is to minimize dangers to the health of all trucking employees whose employment directly affects commercial motor vehicle safety, as well as operators of commercial motor vehicles.

Amendment No. 1: Amend Section 302 to read:

"Sec. 302. The purposes of this title are to promote the safe operation of commercial motor vehicles in or affecting interstate commerce, to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor vehicle safety, and to assure increased compliance with the commercial motor vehicle safety and health rules, regulations, standards and orders issued pursuant to this title."

Explanation: The amendment deletes language which could be construed as limiting DOT jurisdiction to drivers, only while they actually operate a vehicle.

ATA proposes two additional amendments that are necessary to eliminate the potential for conflicts, contests, and duplication of regulations and report requirements of federal agencies, and to more clearly define the authority of the Secretary of Transportation.

Amendment No. 2: Amend the first three lines of Subsection 306(d)(1) to read as follows:

"(d)(1) The Secretary shall, in consultation with the Director of the National

Institute for Occupational Safety and Health and the Secretary of Labor, undertake a study of . . . ."

Explanation: This amendment is necessary to provide one lead agency in a study of employee health hazards, with assistance of the other two agencies. As presently written, Subsection (d)(1) has the potential for promoting conflict and duplication between the Secretary and the Director of NIOSH.

Amendment No. 3: Amend Subsection 306(e):

"(e) The Secretary shall coordinate activities of federal agencies to ensure adequate protection of the safety and health of operators of commercial motor vehicles. The Secretary shall minimize paperwork burdens, assure maximum coordination, and avoid overlap or the imposition of undue burdens by any federal agency on persons subject to such rules, regulations, standards and orders."

Explanation: As now written, Subsection 306(e) indicates equal authority for the three federal agencies in the field of commercial vehicle safety and health, with the only control being the recommendation of the Act that they coordinate their activities. This Subsection, if retained as written, will be an invitation to the agencies to compete and will result in duplicative activities, conflict and confusion.

These amendments are very important to the trucking industry. We do not want two sets of regulations for the drivers, two sets of regulations for vehicles, two sets of regulations for freight handlers and mechanics. Nor do we want two or three agencies collecting similar data from trucking companies and conducting similar monitoring functions of the same truck operations for a study mandated by S. 1108.

Conflicts have existed between DOT and OSHA on a number of issues since passage of the Occupational Safety and Health Act in 1970. And the case law has generally provided that where DOT is regulating safety of the working condition OSHA jurisdiction would be duplicative. The current language of S. 1108 might cause the relitigation of many of these matters. Clearly the intent of the authors as expressed in other sections of the legislation and in earlier versions of commercial vehicle safety legislation is not consistent with the current language.

If S. 1108 is revised as recommended by ATA, trucking industry employees will be well assured of adequate safety and health protection. The Secretary of Transportation will, through knowledge of truck transportation, be able to establish regulations that are more effective for trucking employees than the OSHA standards which are general in nature because they are designed for employees of all types and sizes of business and industry. In carrying out the given authority the Secretary will always have the option of developing specific regulations or adopting OSHA-type standards if they are the most suitable to resolve a particular safety situation or health problem.

On the basis of knowledge of truck transportation and the support of NIOSH and Department of Labor, the Secretary can conduct effective studies of employee safety and health as mandated by S. 1108.

2. The Secretary should have direction and authority to establish rules and regulations to promote compliance with traffic laws

ATA proposes that S. 1108 be revised to clarify that one of the purposes of the Act is to minimize dangers to the safety of the public as well as employees, and that the Secretary has the responsibility for promoting compliance with traffic laws by commercial vehicle drivers.

Amendment No. 4: In addition to the revision in Amendment No. 1, revise Section 302 further by adding the underlined portion of the following:

". . . and to assure increased compliance with *traffic laws and with* the commercial motor vehicle safety and health rules. . . ."

Explanation: The amendment is necessary to evidence the concern of the Congress for compliance with state and local traffic laws.

Most of the nation's truck drivers have excellent safety records and do not engage in unsafe practices. Yet there are some who speed, tailgate, make unsafe lane changes and, in general, do not show proper respect for traffic laws. When an accident occurs it is more often the truck driver than the truck that caused it. The federal government should assist the states in promoting driver compliance with traffic laws.

Amendment No. 5: Subsection 306(a)(1), which is concerned with regulatory authority and standards of the Secretary, should be revised to provide that:

"Commercial motor vehicles are safely maintained, equipped, loaded, and operated by drivers in compliance with traffic laws;"

Explanation: The revision places emphasis on the need for the Secretary to establish regulations which will promote compliance with traffic laws.

The problem of how to increase compliance with traffic laws is complex because of the variations in truck operations, and the financial and manpower limitations of state police agencies. ATA proposes that the Secretary be directed to undertake a study to determine the extent of the problem of truck driver non-compliance with traffic laws, and the needs of law enforcement agencies to improve commercial driver compliance.

Amendment No. 6: Revise Subsection 315(a) by adding the underlined portion of the following:

"Section 315(a). The Secretary shall undertake a comprehensive study of safety characteristics of heavy trucks, unique problems related to heavy trucks, and the manner in which such trucks are driven. Such study shall include an examination of the handling, stability and crashworthiness of heavy trucks and an examination of the programs and needs of enforcement agencies to assure compliance with traffic laws by commercial vehicle drivers."

Explanation: The revision is needed to assure that the study analyzes the operational safety characteristics of both drivers and vehicles, and that consideration is given to the adequacy of law enforcement programs.

If the concerns of the public are to be recognized and substantial improvement is to be made in truck safety, it is essential that more attention be given to the manner in which trucks are driven and traffic laws are complied with.

3. The act should be applicable to property carrying vehicles of less than 10,000 pounds gross vehicle weight rating

ATA urges that the definition of "commercial motor vehicle" in Section 304(2) be revised to provide that the Act is applicable to all property carrying vehciles used in for-hire transportation, regardless of gross vehicle weight rating.

Amendment No. 7: Add the following as Subsection 304(2)(D): "(D) if such vehicle is used to carry property in for-hire transportation, regardless of gross vehicle weight rating."

Explanation: The general 10,000 lb. gvwr limit was established in truck safety legislation for two reasons: (1) it would be unnecessary and impossible to enforce the regulations among the thousands of carriers which operate one or a few small vehicles primarily in a single town or city; (2) it would be unthinkable to impose complex federal requirements on bakeries, delicatessens, plumbers, etc., which might have one small pickup or panel truck used in low mileage operations within a limited range of the point of domicile. Obviously, these and similar truck operations can be adequately controlled by local governments and police agencies.

However, many for-hire motor carriers also operate small vehicles in interstate commerce and are currently subject to federal motor carrier safety regulations. They strongly favor continuation of federal safety controls for small vehicles in for-hire service because such controls assure a greater uniformity of regulations and a greater degree of compliance.

Without federal safety controls these carriers will be subject to a wide variety of state and local regulations governing commercial vehicles. It will be impossible for them to comply and their safety record will suffer with the probability that a poor record will lead to additional laws and regulations to burden their operations.

These carriers point out that removal of the 10,000 lbs. limitation would not automatically impose federal controls on for-hire motor carriers that have small numbers of vehicles operating in a limited mileage range. Waiver provisions in Subsection 306(c) of S. 1108 and exemption provisions in the Federal Motor Carrier Safety Regulations protect such operations from undue regulatory burdens.

4. Inclusion of the term "independent contractor" in the definition of "employee" should be clarified

Independent contractors in the trucking industry have never been considered as employees and to do so would have a negative impact on their status and on those motor carriers which avail themselves of the service provided by the contractor. It has been the understanding of motor carriers and independent contractors, in the development of past safety legislation, that inclusion of the term "independent contractor" in the definition of "employee" is only for the purposes of a specific safety law and is in no way an intent to change the long-accepted status of the independent contractor as a "non-employee."

Amendment No. 8: ATA proposes revision of Subsection 304(3)(A) as follows:

"(A) A driver of a commercial motor vehicle (including, for purposes of this Act only, an independent contractor while in the course of personnally operating a commercial motor vehicle;"

Explanation: Inclusion of the term "independent contractor" in the definition of "employee" beyond the provisions of S. 1108 is limited.

5. The Secretary should be required to make cost benefit considerations in all rulemaking activities

ATA urges that consideration of costs and benefits be required of the Secretary when new regulations are being developed as well as when regulations are being revised. The determination of whether or not it is parcticable to consider costs and benefits should be reserved for the Congress. To that end we strongly recommend revision of Subsection 306(a).

Amendment No. 9: (1) Revise the second sentence of Subsection 306(a) to eliminate the words "where practicable" and to make consideration of costs and benefits applicable to new regulations also. The sentence should then read:

The Secretary shall consider costs and benefits before establishing or revising rules, regulations, standards, or orders."

(2) Add the following as the third sentence in Subsection 306(a): "If the Secretary finds that it is not practicable to consider costs and benefits in any revision or promulgation of rules; regulations, standards or orders the Congress shall be promptly notified and furnished reasons why such consideration is not practicable, a summary of alternatives to the proposed rule, and a summary view of affected parties."

Explanation: Although it may sometimes be difficult to give proper consideration to costs and benefits when safety is involved, these remain primary considerations in any rulemaking activity. Current wording of Subsection 306(a) will cause the cost-benefit requirement to be honored infrequently. It will allow employees of the Secretary who are engaged in rulemaking to be less thorough merely because safety is involved.

If the Congress finds that there may be justification in a particular instance for ignoring the cost-benefit consideration it should at least require the reporting procedure provided in the ATA amendment. If this course is followed it will assure proper consideration of the primary elements of any rulemaking.

6. Waiver of a rule, regulation, standard or order should be allowed if not contrary to the public interest

With one exception, ATA agrees with the waiver provisions of Subsection 306(c) which allow the Secretary to waive in whole or in part application of any rule, regulation, standard or order. The Subsection allows the waiver if it is consistent with the safe operation of commercial vehicles and in the public interest. Whether the waiver is in the public interest should not be a consideration as it may not make any difference to the public if the waiver is granted or not. The Secretary should be allowed to grant waivers if it is not contrary to the public interest to do so.

Amendment No. 10: The first sentence of Subsection 306(c) should be revised to read as follows:

"(c) The Secretary may waive in whole or in part application of any rule, regulation, standard, or order established under this section with respect to any person or class of persons if the Secretary determines that such waiver will not be contrary to the public interest and is consistent with the safe operation of commercial motor vehicles."

Explanation: The revision gives the Secretary authority to grant waivers which will not adversely affect the public.

7. Eliminate the requirement that recommendations be included in the study of health hazards mandated by subsection 306(d)(1)

ATA does not believe that it is desirable to require inclusion of "recommendations' in a study. The study contractor may have the expertise to determine the nature of health hazards and possible solutions for inclusion in voluntary programs, but not have the expertise to determine what is most appropriate from a regulatory standpoint. If recommendations are mandated in a study, there will be strong pressure for adoption of such recommendations as regulatory requirements. The Bureau of Motor Carrier Safety was, in fact, sued for not adopting the recommendations of a contractor who did an "hours-of-service" study for it. It is more desirable to have "findings" included in the study so that the Agency can develop appropriate rulemaking based on such findings with an opportunity for public comment on proposed rules and regulations before their adoption, in keeping with the Administrative Procedures Act.

Amendment No. 11: Revise Subsection 306(d)(1) at the sentence which begins on line 8 of page 27 to read as follows:

"The study shall include findings, which shall not be binding on the Secretary, regarding the most appropriate methods for protecting the health of operators of commercial motor vehicles."

Explanation: This revision will protect the Secretary from pressures to adopt recommendations that may not be in the best interests of the public or of the regulated parties, and it will assure a more objective approach to the development and adoption of regulations.

8. The Secretary should be directed to grant the right of consultation and accompaniment to employers

The right of consultation and accompaniment must be granted to employers because of their vested interest in all of the premises and all of the work processes, and because of their need to assure that the agent of the Secretary is properly informed about work processes and conditions on the premises. The right of consultation and accompaniment for employees and their duly authorized representatives should be optional at the discretion of the agent of the Secretary, and limited to matters which are appropriate. For example, accompaniment would be appropriate for employees for a survey of hazards in a particular work location but inappropriate for a lengthy analysis by the agent of driver logs and certain other records.

Amendment No. 12: There should be revision of the second sentence of Subsection 308(a)(1) to read as follows:

"Any such agent of the Secretary shall display proper credentials when requested and must provide employers the right of accomaniment and consultation. Such agency may consult with employees and their duly authorized representatives and may offer them the right of accompaniment, where appropriate, for inspection of facilities, equipment and operations."

Explanation: This revision recognzies the all-inclusive interest of the employer by mandating that employers be given the right of accompaniment. It recognizes that employee interests are more limited and gives the agent of the Secretary the discretion of allowing employee accompaniment and consultation according to whether or not it is appropriate to do so.

9. The provision for improvement of equipment is redundant to the provision for placing equipment out of service and should therefore be eliminated

Impoundment of motor vehicles or motor vehicle equipment is provided in Section 308; even though Section 310 provides authority to the agent of the Secretary to place vehicles out of service if they are found to be in imminently hazardous condition, and to order cessation of operations that are imminently hazardous. Authority to impound vehicles are vehicle equipment should not be sanctioned by S. 1108 because it would be a redundant authority. If there is a need for impounding motor vehicles or motor vehicle equipment beyond that which results in a vehicle being placed out of service, it is not apparent to ATA. The provisions for impounding motor vehicles or motor vehicle equipment should be eliminated. If strong justification is found for retaining such provisions, then criteria should be established in the Act by which the necessity for impoundment can be determined and the potential for abuse of the impoundment provision can be reduced.

Amendment No. 13: Section 308 should be revised in three places to eliminate provisions for impoundment of motor vehicles or motor vehicle equipment:

(1) In Subsection 308(a)(2)(A), remove the parenthetical phrase which reads: (including impoundment of motor vehicles or motor vehicle equipment);

(2) In Subsection 308(a)(2)(B)(i), on line 16 and line 17 remove the words: and of impoundment of motor vehicles or motor vehicle equipment appropriate to such inspections; and

(3) In Subsection 308(a)(2)(B)(i)(I), revise as follows:

"(I) Identify the items or type of property, other than motor vehicles or motor vehicle equipment, to be impounded, if any;"

Explanation: The revisions eliminate provisions for impoundment of motor vehicles or motor vehicle equipment.

10. The Secretary should be directed to "suggest" rather than "specify" actions to be taken to avoid subsequent violations

Section 310(a) provides that the Secretary must specify actions which are to be taken in order to avoid subsequent similar violations. This limits a violator to a course of action which may not be as effective in costs or benefits as another action. Among the thousands of trucking employers there are many different ways of accomplishing an objective, all of which may be effective for the particular nature of a work-related activity and circumstances of a particular type of truck operation. The Act should not destroy individual initiative by mandating the government course of action and allowing no alternatives.

On the other hand, it is beneficial to employers to have the government point of view on actions which might be taken to avoid subsequent similar violations. Frequently, government inspectors have encountered solutions to problems in one truck operation that may be unknown, yet of benefit in another truck operation and so it may be helpful if the inspectors are required to make such information avilable to employers, without mandating that the actions or techniques be adopted by the employer.

Amendment No. 14: Revise the third sentence of Subsection 310(a) as follows:

"The notice shall fix a reasonable time for abatement of the violation, specify the appropriate civil penalty, if any, and suggest the actions which might be taken in order to abate the violation(s)."

Explanation: The revision allows the Secretary to be helpful by "suggesting" actions to be taken. It gives an employer the option of taking a course of action most suitable for his operations whether the action is recommended by the Secretary or not.

11. The civil penalty for recordkeeping violations should not be cumulative for each day of the violation

Civil penalties for recordkeeping violations have been in effect for many years under those provisions of the Interstate Commerce Act which have been transferred to the jurisdiction of the Secretary of Transportation. Recordkeeping penalties are more equitable than other civil penalties because they are usually imposed after a pattern of violations is established, rather than on the basis on a one-time violation.

Yet, even the provisions for imposition of civil penalties for recordkeeping violations can be abused unless the enabling statute is carefully worded and provides limits on the authority of the agents of the Secretary to impose such penalties. Section 310(b) of S. 1108 provides for a civil penalty for each recordkeeping violation of up to $500. Additionally, it provides that each day of the same violation shall be considered a separate offense and is therefore subject to an additional $500 penalty, to a maximum total of $10,000 for a single violation. This is excessive. If one drivers makes a minor error in completing his daily log for 20 days the maximum penalty of $10,000 would be reached and yet safety may not have been compromised. The provision for cumulative penalties for each day of a recordkeeping violation should be eliminated.

Amendment No. 15: Eliminate the second sentence of Section 310(b).

Explanation: Elimination of the second sentence eliminates the potential for excessive penalties that result from multiplying recordkeeping violations by each day they continue.

12. The civil penalty for a single violation should be reduced to $2,500

The highest civil penalties provided for in S. 1108 would be for those violations which could reasonably lead to, or have resulted in, serious personal injury or death. The maximum amount of such penalty is $10,000 and before it can be imposed the Secretary must consider such things as the nature, circumstances, extent, and gravity of the violation and, with respect to the violation, the degree of culpability, history of prior offenses, ability to pay, and other matters.

A first glance might cause one to agree with this new penalty. Yet the imposition of the penalty is still a matter of subjective judgment of the agents of the Secretary. Such penalties are easy to assess and collect in comparison with criminal penalties but because they can be imposed so easily and in such a subjective manner the statute should not allow high amounts for single violations. If an offender has a record of continuing violations that are really serious the government should be limited to criminal action to assess heavy penalties. Otherwise there is no reason for the criminal provisions of this Act as the government will seek to settle all violations by civil penalty.

ATA believes, also, that the employer should not be responsible, and subject to civil penalty, if the violation was caused by an employee's action and the employer had acted in good faith to avoid such violations.

Amendment No. 16: The third sentence of Section 310(b) should be revised as follows:

"If the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, he may assess a civil penalty not to exceed $2,500 for each offense; provided, however, that the employer shall not be subject to civil penalty for violations of employees if the employer has acted in good faith to avoid such violations; and provided further, that except for record-keeping violations, no civil penalty provided under this title shall be assessed against an employee for violations of this title unless the employee is an operator of a commercial motor vehicle and the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000."

Explanation: This revision would reduce the maximum amount of civil panelty for a single violation by an employer to $2,500, and prohibit such a penalty if the violation was by an employee and the employer had acted in good faith to avoid violations.

13. The requirement for posting a notice of violation is an unnecessary burden that should be eliminated

The requirement for posting notice of an employer violation has, in the past, been more of a nuisance than benefit. Employees have generally paid little attention to such notices. They have developed their own perceptions of the safety of their employer's operation without such notices. Motor carriers are generally so small that often the employees learn of violations and citations by word of mouth. The requirement for such posting is redundant to the provision that employees or their representatives may be allowed to accompany the inspector as appropriate.

Amendment No. 17: Eliminate Subsection 310(c).

Explanation: Elimination of this Subsection will eliminate the requirement for posting a notice of violation and will thus prevent the imposition of this nuisance burden on motor carrier employers.

14. The term "imminent hazard" should be defined

ATA supports the provision to place vehicles or employees out of service if they pose an imminent hazard to safety, or to require cessation of operations which are imminently hazardous. However, the term imminent hazard should be defined in the law and not left to the judgment of the Secretary or agents of the Secretary.

Placing drivers and vehicles out of service is a highly effective enforcement tool. By this action the unsafe driver or vehicle is immediately removed from the highway. This is a costly penalty because of the economic ramifications of tying up the driver and vehicle. Utilization of both is lost. There are possible expenses for driver meal and motel costs. There are costs for vehicle repair and tow truck services. There is also the potential for incurring the ill will of customers due to the delay of freight.

Because of the severe nature of the impact of placing drivers or vehicles out of service, or of requiring the shut down of an imminently hazardous operation, the procedure should be allowed only if imminent hazard is defined as a condition likely to result in a serious injury or death if the operation that is imminently hazardous is not discontinued immediately.

Amemdment No. 18: Add the following as the second sentence in Subpart 310(d):

"Imminent hazard is any condition of vehicle, employee, or commercial vehicle operations which is likely to result in serious injury or death if not discontinued immediately."

Explanation: Inclusion of the definition of section 310(d) will assure that commercial vehicle operations are not shut down, or drivers and vehicles placed out of service for lesser safety violations.

15. Penalties and fines should be deposited to the highway trust fund

It seems only fair that penalties and fines imposed for violations that posed a hazard for highway users should be deposited to the Highway Trust Fund for the benefit of those same users.

Amendment No. 18: Revision Subsection 310(i) to read: "(i) All penalties and fines imposed under this section shall be deposited into the Highway Trust Fund.

Explanation: This removes the provision that penalties and fines shall be deposited into the Treasury as miscellaneous receipts.

16. States should not be permitted to adopt new regulation which are no uniform with Federal requirements, unless there is strong justification for adoption of nonuniform requirements

Section 312(a) allows states to adopt new regulations that are not uniform with federal requirements as long as they are not inconsistent. ATA does not agree with the philosophy that it is all right for regulations to be different as long as they are not inconsisent. When regulations are different they are usually more difficult to know, understand and comply with for someone who operates under more than one set of regulatory requirements.

ATA supports the concept of uniform regulations, rather than a requirement that only calls for consistency. Uniformity of safety regulations from one locality to another and from state to state is highly desirable because it results in better compliance. Employers and employees who operate in more than one location find it easier to comply with uniform requirements. The end result of uniformity of regulatory requirements is improved safety.

S. 1108 should require that states cannot adopt new regulations unless they are uniform. The only exception should be if the needs of a state are such that a different regulation is essential. In such case the state should be required to obtain approval by the Secretary and should be required to show that there is a locally compelling need for the regulation; that there would be no undue burden on commerce; and that the regulation would not materially diminish commercial motor vehicle safety or the health and safety of employees.

Amendment No. 19: Revise Subsection 312(a) as follows:

"Except as may otherwise be provided in this act or any other law, a State agency may not adopt safety rules, regulations, standards or orders for commercial motor vehicle safety unless they are uniform with federal rules, regulations, standards, and orders issued under this title; except that a State may adopt additional or more stringent safety rules, regulations, standards or orders for commercial motor vehicle safety upon a finding by the Secretary that there is a compelling local need therefore, and that such safety rules, regulations, standards or orders will not materially diminish commercial motor vehicle safety or the health and safety of employees, or unduly burden interstate commerce."

Explanation: The proposed revision would allow adoption of regulations that are not uniform only if a state can show a locally compelling need and that safety and interstate commerce will not be adversely affected.

17. S. 1108 should provide for an extensive roadside inspection program for commercial vehicles and commercial vehicle drivers

Most truck-caused accidents result from human error, not defective vehicles. Federal studies and federal data show that vehicle defects are the case in 5 to 10 percent of truck accidents.

Despite those facts, ATA is a strong supporter of roadside inspections. That is because they are a highly effective mechanism for monitoring the conditions of drivers and equipment, for monitoring the maintenance practices of individual motor carriers and of the industry as a whole, and for removing from service drivers and vehicles that are unfit. ATA has demonstrated its faith in the effectiveness of roadside inspections by conducting state and national roadside inspection programs in cooperation with its affiliated state associations and conferences, and by supporting the roadside inspection programs of the Bureau of Motor Carrier Safety and the Commercial Vehicle Safety Alliance (CVSA).

CVSA is an organization of eleven states and two Canadian provinces dedicated to improvement of commercial vehicle safety programs. The main thrust of its efforts are its roadside inspections. CVSA works to improve the efficiency of the program in each state and province. Procedures and inspection criteria have been streamlined so that inspectors can inspect more vehicles per hour than with any other program. The use of temporary inspection stickers reduces the possibility of duplicative inspections on the same vehicle by different states within a 90-day period, unless the vehicle looks or sounds bad in which case an inspector will inspect it despite the presence of an inspection sticker from another state.

Roadside inspections are especially designed for high mileage vehicles and drivers who operate long distances from their home bases. The inspections place unfit drivers and unfit vehicles out of service when and where they are. There is no other inspection program as effective for high mileage vehicles. No other program provides such high benefits and low cost per vehicle.

For S. 1108 to be effective in improving the condition of commercial vehicles and commercial vehicle drivers for the safety of the public and employees it is essential that there be an increase in day-to-day enforcement activity.

The legislative must provide an incentive for states to improve the number and quantity of their own roadside inspection programs. With the proliferation of state roadside inspections, there will be a greater effort by commercial vehicle operators which have not been operating safely to get vehicles and drivers in safe operating condition. As we stated earlier, the most effective enforcement tool available to the government is the provision for placing drivers and vehicles out of service. Such an action is very costly to the motor carrier and so the roadside inspection provides a very strong financial incentive for improved safety of commercial vehicle operations.

The annual inspection requirement set forth in Section 313 does not provide benefits comparable to roadside inspections. The cost would be high and the benefit low as annual inspections are of little value for high mileage commercial vehicles and of no value at all in monitoring the condition of drivers.

ATA proposes therefore that the annual inspection program provided in Section 313 be replaced with a provision for grants to states similar to that in Section 402 of the Surface Transportation Assistance Act of 1982 (STAA) for increased roadside inspection activity.

Amendment No. 20: Replace proposed Section 313 which provides for an annual inspection of commercial vehicles with a plan for grants to states to increase the number and effectiveness of roadside inspections.

Explanation: Roadside inspections are more dynamic for controlling the condition of commercial vehicles and drivers of such vehicles and thus they are more desirable as a safety tool than the annual inspection requirement, which is geared more to low mileage vehicles.

18. Certification of safety fitness requirement is redundant

For a number of years the Bureau of Motor Carrier Safety has had a program for rating the fitness of motor carriers, both private and for-hire. Recently it formalized the procedure through a series of rulemaking actions. The result is an electronic program that permits the Bureau to update ratings more frequently and to provide rating information to states and others on request.

The major problem with the current system is that it provides a rating for only 29,000 motor carriers out of an estimated 190,072 carriers. The Bureau has no ratings for approximately 8 percent of the ICC regulated common and contract carriers, no ratings for approximately 96 percent of the ICC exempt carriers and no rating for 93 percent of the private carriers.

As the Certification of Safety Fitness requirement in Section 314 would apply only to safety fitness of persons seeking new or additional operating authority it would probably not be applicable to the great majority of those carriers for which there is no rating at the present time, but would be applicable to those for which there is already a rating. On that basis there appears to be little or no benefit in the requirement of Section 314.

Amendment No. 21: Section 314 should be eliminated or revised to provide for a safety fitness certification for all motor carriers.

Explanation: Elimination of Section 314 would remove a redundant requirement.

[The following information was subsequently received for the record:]

SUPPLEMENTAL STATEMENT OF AMERICAN TRUCKING ASSOCIATIONS, INC.

American Trucking Associations, Inc., presents this supplement to its Statement of June 14, 1983, for the purpose of amending the Statement in accordance with the position taken by the ATA Executive Committee.

On June 14, 1983, at the Hearing on Title III of S. 1108 held by the Committee on Commerce, Science and Transportation, ATA spokesman Larry Stern noted that ATA would probably file a statement to supplement ATA's detailed written comments. Following the Hearing, the ATA Safety and Engineering Policy Committee met and reviewed in detail the ATA statement on Title III. Such a meeting was not possible prior to the Hearing because of short time frames involved.

The Safety and Engineering Committee recommended several changes in the ATA position set forth in the June 14 Statement. These changes were endorsed by the ATA Executive Committee in meeting on June 15, 1983, and are set forth herein.

1. ATA support of truck safety legislation

ATA continues its policy of generally supporting truck safety legislation. If the changes recommended in the ATA Statement, as amended by this supplementary statement, are incorporated in Title III, ATA can specifically state its support for Title III.

2. Study of truck driver noncompliance with traffic laws

In the ATA June 14 Statement, on page 10, ATA urged that "the Secretary be directed to undertake a study to determine the extent of the problem of truck driver non-compliance with traffic laws, and the needs of law enforcement agencies to improve commercial driver compliance."

The study proposed by ATA should be broadened to include analysis of human factors of accident causation, focusing not just on the extent of non-compliance with traffic laws by truck drivers but also on the reasons therefore. ATA recommends the following as a substitute for Amendment No. 6 on page 10 of our June 14 Statement which suggested revision of Section 315(a):

SECTION 315(a). The Secretary shall undertake a comprehensive study of safety characteristics of heavy trucks, unique problems related to heavy trucks, *and the manner in which such trucks are driven.* Such study shall include an examination of the handling, stability and crashworthiness of heavy trucks. *It shall include analysis of human factors of accident causation, focusing on such things as the extent to which there is non-compliance with traffic laws and safety regulations by truck drivers and the reasons therefore. Programs of enforcement agencies should be examined to determine how they can be made more effective in improving truck driver compliance with traffic laws.*

Explanation: The revision is needed to assure that the study analyzes the operational characteristics of both drivers and vehicles, and that consideration is given to the adequacy of law enforcement programs.

If the concerns of the public are to be recognized and substantial improvement is to be made in truck safety, it is essential that more attention be given to the manner in which trucks are driven and traffic laws are complied with.

3. The act should be applicable to vehicles which have a gross weight rating of 10,000 or more pounds

Contrary to the position taken in our earlier statement, ATA does not propose any change in the definition of "Commercial motor vehicle" which is set forth in Section 304(2).

The ATA Executive Committee has voted that inclusion of vehicles with gross vehicle weight ratings of less than 10,000 lbs. within the provisions of the Act is not necessary because such vehicles have basically the same operating characteristics as passenger cars and are used primarily in local transportation where there are adequate controls of their operations. Therefore, they do not need the special requirements and controls imposed by Federal regulations.

Amendment No. 7 on page 12 of the ATA original statement is eliminated.

4. ATA opposes civil penalties other than those for recordkeeping violations

The highest civil penalties in Title III are for those violations which could reasonably lead to, or have resulted in, serious personal injury or death. The maximum amount of such penalty is $10,000 per violation. Title III provides that before the penalty can be imposed the Secretary must consider such things as the nature, circumstances, extent, and gravity of the violation and, with respect to the violation, the degree of culpability, history of prior offenses, ability to pay, and other matters.

Despite such precautionary language, the imposition of the penalty remains a matter of subjective judgment of the agents of the Secretary. A motor carrier with an excellent safety program and safety record is still subject to the civil penalty even though the occurrence of a violation might have been beyond its control, or might have been a happenstance event that is not indicative of a poor program or lack of control of its operations.

The imposition of civil penalties can be unjustified, unfair in the amount of the penalty, unfair in relation to the seriousness of a violation, and unfair in the extent to which it is imposed on some motor carriers and not on others. Unfortunately, in the civil penalty system, the regulator plays the role of enforcement official and judge, as well as court of appeals. The motor carrier is presumed guilty until it can prove its innocence.

The civil penalty system is attractive to regulators because such penalties are easy to impose and to collect. However, they should not be a substitute for criminal penalties. If an employer has numerous serious violations that indicate a lack of concern for safety and a poor safety program, the Secretary should take criminal action rather than rely on civil penalties. Otherwise there is no justification for criminal penalty provisions as they will not be used due to the ease of imposing civil penalties.

For motor carriers which have a generally good safety program and record and which demonstrate a sincere effort to comply with safety requirements, the civil penalty provisions applicable to recordkeeping violations, together with other penalties such as vehicles and drivers being placed out of service, are an adequate penalty for violations and provide incentive for improvement.

Amendment No. 16 in the June 14 ATA Statement is eliminated and replaced with the following:

Amendment No. 16: The third sentence of section 310(b) should be revised to read as follows:

"Except for recordkeeping violations, no civil penalty shall be assessed against an employee for violations of this title unless the employee is an operator of a commercial motor vehicle and the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000."

Explanation: This revision eliminates the civil penalty provision for violations other than recordkeeping violations. It would prohibit civil penalties for employees except for recordkeeping violations and for gross negligence or reckless actions by drivers.

ATA recognizes that the penalty for an employee should not be the same as that for an employer. However, if the actions for which an employee can be penalized are to be limited to extreme violations involving gross negligence or reckless disregard for safety, the amount of such penalty must be higher than that in Section 310(b) to serve as a deterrent to such actions.

5. The act should provide for total preemption of State and local requirements by the Department of Transportation

The ATA Executive Committee has taken a strong position with regard to uniformity of state regulations with those of the Federal government. It has voted that Section 312(a) should not allow states to have regulations that are not uniform with Federal regulations and that will affect interstate truck operations. When regulations are different from one location to another, they jeopardize safety because they are more difficult to know, understand and comply with for someone who operates under more than one set of regulatory requirements.

The majority of the states have adopted the federal motor carrier safety regulations in whole or in part and this demonstrates that there is no need for non-uniform regulations nor would there be a hardship for the states if uniformity is required for interstate operations. The value and practicality of the federal requirements has been demonstrated over a period of many years and they have served well as both state and federal requirements.

ATA Amendment No. 19 should be replaced by the following:

Amendment No. 19: Revise Subsection 312(a) as follows:

Safety rules, regulations, standards, or orders for commercial motor vehicle safety must be uniform with Federal rules, regulations, standards and orders issued under this title.

Explanation: It is not in the interest of safety to allow a variety of differing laws from one state to another. Safety is best served if laws and regulations governing commerical vehicle operations are uniform from state to state.

6. If the requirement for annual truck inspection is retained, motor carriers should be allowed to qualify for self-inspections

The ATA Executive Committee supports the ATA position that Section 313 of Title III should provide for grants to states to increase the number and effectiveness of roadside inspections.

However, it has taken the position that if the requirement for annual inspections is retained in Section 313, there must be a provision to allow motor carriers to qualify as self inspection stations. This is essential so that carriers do not have to undergo the burden and costs of sending vehicles to inspection stations. Sending a vehicle for inspection involves a minimum of one hour, and probably two or three hours, of driver time and vehicle time. The cost per vehicle for inspection time alone can be more than $50. This amont escalates dramatically for larger fleets.

For years a number of states which require motor vehicle inspections annually have conducted a program for certifying motor carrier maintenance facilities for self inspection programs and so the annual inspection has been conducted as a part of routine maintenance activity without the major cost burden that would otherwise be incurred.

7. Certification of safety fitness should be required of all carriers

The ATA Executive Committee has voted that certification of safety fitness is an important tool for improving the safety of all motor carriers and that the provision for certification of safety fitness should therefore be applicable to all motor carriers, private and for-hire.

As written, there appears to be little or no benefit in the requirement of Section 314 because it would apply only to safety fitness of persons seeking new or additional operating authority. It would probably not be applicable to the great majority of motor carriers for which the Bureau of Motor Carrier Safety has no rating at the present time.

The following is a replacement for ATA Amendment 32 on page 32 of our original statement:

Amendment No. 21: Revise Section 314(a) as follows:

SEC. 314(a). The Secretary shall establish a procedure to determine the safety fitness of persons operating in interstate commerce as motor carriers of property or passengers. Such a procedure shall include:

(1) specific requirements to be met by such persons to prove safety fitness;

(2) a means of determining whether such persons meet the safety fitness requirements specified under paragraph (1);

(3) a safety rating system for designating motor carrier fitness as satisfactory, conditional or unsatisfactory.

Explanation: For the protection of the public, it is essential that the safety programs and safety conditions of motor carriers in interstate commerce be monitored so that those which are unsatisfactory can be upgraded through more stringent federal controls or prohibited from continuing unsafe operations.

8. There should be a priority system for investigation of employee complaints

Section 309 requires that the Secretary investigate complaints alleging safety violations. It is the ATA position that the Secretary must also be directed to establish a priority system which will assure that complaints of more serious safety violations are investigated first, and to assure that the agency does not become so involved in the investigation of minor complaints that other, more important compliance efforts receive little or no consideration by the agency.

At one time, the Occupational Safety and Health Administration was so overburdened with minor complaints and so utterly lacking in a system for giving priority to more important complaints, that it was paralyzed and unable to carry out an effective program of complaint investigations.

Amendment No. 22: Add the following as Section 309(c):

(c) The Secretary shall establish a procedure to rate complaints of safety violations according to the seriousness of the alleged violation. The most serious violations shall be given priority of investigation. Complaints of minor violations shall be investigated at the discretion of the Secretary based on a determination that an investigation is necessary for safety and will not preempt a more important safety activity.

Explanation: It is essential that complaints of serious safety violations be given priority in the matter of investigations. It is also essential that other safety responsibilities of the Secretary not be delayed by the investigation of complaints of minor safety violations. This amendment is for the purpose of directing the Secretary to establish a procedure which assures that investigation of complaints will be prioritized.

Senator **DANFORTH**. Mr. Thompson.

STATEMENT OF KENNETH THOMPSON, VICE PRESIDENT AND DIRECTOR OF SAFETY, YELLOW FREIGHT SYSTEM, ACCOMPANIED BY STEPHEN P. MURPHY, SENIOR VICE PRESIDENT

Mr. **MURPHY**. Mr. Chairman, I'm Steve Murphy and with me is Ken Thompson, but I thought you might want to know that he has been a high school teacher, taught driver education and English, and has a master's degree in health and safety from Indiana University, and he was a highway patrolman in Indiana for 6½ years, and he has been with Yellow Freight since 1967. And any thought is that he can probably do a good job of answering from the practical standpoint, the supervising of over 4,000 road drivers in our operation.

Mr. **THOMPSON**. Thank you, Mr. Chairman.

First of all, I would like to explain some of the situations and things that exist within Yellow's safety program as it applies to S. 1108. We have a safety policy, the same as any other reputable carrier does. It is an obligation to the public and also to our employees to continuously maintain an effective safety program.

I have 19 full-time safety supervisors on the road, who are on the road approximately 90 to 95 percent of the time monitoring our drivers. We have 3,127 road tractors, 10,500 trailers. Our road drivers consist of 4,115 in population. The average salary of these drivers in 1982 was $40,000. The mileage Yellow Freight system drove in 1982 was 353 million miles.

The DOT reportable accident statistics for the year 1982—a DOT reportable accident is a personal injury, a fatality, or property damage over $2,500—the frequency was 0.71 accidents per million miles traveled. In the first 4 months of 1983, we have improved on that, 0.61.

We have an incentive, as we are members of the National Safety Council and their awards program is involved deeply in this organization. As a member of their board of directors, I am also on the awards committee, which I am very proud to be a part of.

Since 1977, we have awarded our drivers various safe driving awards. We just honored, not too long ago since 1977, 3 drivers who had driven 30 consecutive years without any type accidents whatsoever. Under the rules of the National Safety Council, we count every accident, whether he is hit by someone else or whether he strikes an object or whether he goes off the road.

During that time, we have had 8 drivers for 25 years, and also for 10 years consecutive 328 road drivers who have driven without any accidents whatsoever.

I say that 98 percent of the drivers on the highway today are doing a satisfactory job. As far as crashworthiness is concerned, of the 4,115 road drivers that we have, 1 driver lost his life in 1982 due to the fact of an individual making a U-turn in front of him on one of the interstate highways.

We have been involved in testing with the SAE committee to study the parameters of the truck cabs themselves. We also just finished up in January a wintertime driving program with the National Safety Council, because we are of great concern that tire chains in adverse weather are a definite plus for the industry.

We also encourage seatbelt programs with all of our employees, whether they are drivers or not. We have air-conditioned cabs in the tractor and we have also air-ride seats. Our drivers also because of the large truck bill, are using double-bottom trailers throughout this country, two 27-foot trailers pulled by a single tractor.

We have one-on-one training for these drivers. I am a firm believer in one-on-one training as the way to go. Our drivers precheck this equipment before they leave. They also make an inspection of the equipment after they leave.

I am a little concerned about the annual inspection of equipment, considering the number of pieces of equipment that I told you about, due to the fact that everybody can have their equipment ready for an annual inspection. I am a firm believer that roadside inspections, not only by the Federal Government but by the States as well, is one of the very essential parts of any program, due to the fact not only will you check the equipment, you will check the drivers as well.

I am a firm believer also that many of the accidents are caused by the human factors involved. The driver is also exposed to the hours of service. We have done a study. The question was asked earlier, do you believe fatigue is a factor in road accidents. For the hours of service study some years ago, we did a study and found out that our drivers average 54 hours per 8 days under the Federal regulation, instead of the 70 hours like a lot of people are led to believe.

I would strongly recommend that we take a good hard look at the commercial vehicle safety alliance inspection program, which I am proud to state the State of Missouri has just adopted, which checks the brakes and suspension and steering mechanism of the units, the tires and the wheels, the most important parts of the vehicle.

Also, I believe that we need to do a considerable amount of work with traffic law enforcement on the highways today. We are preparing to enter into an agreement with Northwest University, the civil engineering department, where we want to know about the human behavior of our drivers. We also want to know about the accidents that we have had in the past and what we can do to correct the problems in the future.

I am a strong believer in the National Driver Register. I think it ought to have more teeth in it. I think we ought to have exposure.

And with that, I leave you with one fact, that safe drivers are not the problem, they are part of the solution.

Thank you.

Senator **Danforth**. Thank you, sir.

You do not think that civil penalties are particularly helpful?

Mr. **Thompson**. Civil penalties to a certain degree might get someone's attention, but I think it is a moral obligation to everyone.

Senator **Danforth**. But I do not see how we police rules just saying, here is the rule and if you violate it you violate your moral obligation.

Mr. **Thompson**. I would say if it is a consistent violation, yes, you should have a civil penalty.

Senator **Danforth**. How about safety fitness requirements?

Mr. **Thompson**. Safety fitness requirements under the Federal Highway Administration programs that they have now I feel are sufficient.

Senator **Danforth**. How about this bill? Do you say that that is a mistake?

Mr. **Thompson**. No. No, I do not feel like it is. I know you people put a lot of work into it and I respect you for it, and I know that you are headed in the right direction. And I might say that our company is available to help any of your administrative assistants in any way. We have an open door policy and we would be glad to work with anyone of you.

Senator **Danforth**. Thank you very much, sir. We appreciate your testimony.

I am sorry to be moving along rather briskly, but we have six more witnesses and we are going to have at least one more vote on the Senate floor this morning, and it is 5 minutes after 11.

[The statement follows:]

STATEMENT OF KENNETH A. THOMPSON, VICE PRESIDENT—SAFETY, YELLOW FREIGHT SYSTEM, INC.

My name is Kenneth A. Thompson, Vice President—Safety, of Yellow Freight System, Inc., 10990 Roe Ave., Overland Park, Ks. 66207.

I am outlining my comments reference S. 1108, "Highway Safety Act of 1983". My comments are given section by section in the areas I am familiar with and where I believe I have expertise.

Title III—Sec. 302. I believe emphasis must be placed on the subject of compliance with "traffic laws" as the subject of health is already presented in the Federal Motor Carrier Safety Regulations.

Sec. 304. (2)(A) The act should apply to those vehicles of less than 10,000 gvwr in a for-hire operation as many times they are represented as part of a large fleet.

Sec. 306. (a) Regulatory Authority. Before the Secretary establishes any rules or makes revisions in present rules, regulations, or standards there should be consideration given to the costs and the benefits the change or changes would bring. The question needs to be asked whether the amount of safety benefit in any change warrants the expense of implementation?

Sec. 306. (a)(1) It is my belief mention should be made in reference to operating motor vehicles in compliance with traffic laws.

Sec. 306. (d)(1) The Secretary of Transportation shall be the one to undertake studies involving commercial vehicles. This is the way studies are conducted at the present time. NIOSH and OSHA should not be involved in any studies with commercial vehicles.

Sec. 306. (e) The Secretary of Transportation must have the leadership role involving commercial vehicles.

Sec. 308. (a)(2)(A) The words "impoundment of motor vehicles or motor vehicle equipment" should be removed and the wording "taking out of service" inserted as this will be consistent with Sec. 310. (d) of this Act. This also is consistent with Sec. 396.9 of the Federal Motor Carrier Safety Regulations.

Sec. 310. (a) Penalties. The Secretary of Transportation should have the ability to suggest the appropriate civil penalty and not necessarily use the word specify.

Sec. 310. (b) I question the value of a civil penalty such as has been proposed. There is no value what so ever in assessing a penalty for, as an example, daily logs kept by road drivers. If a driver has a discrepancy of let's say not adding correctly for 10 days, the potential for civil penalty of $5,000 exists. Emphasis must be placed on education and not criminal prosecution. I suggest total elimination of civil monetary penalties assessed against a violator for recordkeeping.

Also, the employer should not be responsible for the actions of an employee if the employer has operated in good faith.

Sec. 310. (d) I question the validity of an employer ceasing operation. If there is the possibility of an imminent hazard I would not object, however, imminent must be defined, rather than being left to the subjective judgment of the investigating officer.

As an example, a tail light failure may be an imminent hazard, however if failure occurs while the unit is in operation, I do not believe ceasing operations is justified.

Sec. 312. (a) State Regulations. There are Federal Motor Safety Regulations in existence now and it would not be objectionable if the states wished to adopt these regulations. I would object to the states being permitted to write their own regulations, since this would result in lack of uniformity. If there is a compelling need by a state or locality to develop their own regulation it must be approved by the Secretary of Transportation.

Sec. 313. (a) Annual Inspection. The Federal Motor Carrier Safety Regulations Sec. 393 pertain to—Parts and Accessories Necessary for Safe Operation of Commercial Vehicles. This regulation we must abide with. Sec. 313. (a) would allow the states to adopt inspection stations which would involve a high cost to the motor carrier and the benefits would be low. I would suggest that states be involved with roadside inspections. This is now handled by the Federal Bureau of Motor Carrier Safety Investigators and I should also mention many states have adopted the Commercial Vehicle Safety Alliance Inspection roadside inspections. I suggest we keep the roadside inspections, since they place emphasis not only on inspecting the equipment but the driver as well. Vehicle defects are the cause of only 5 to 10 percent of truck accidents. Annual inspections are not going to eliminate the 90 percent of truck accidents caused by human error. Roadside inspections could possibly reduce this percentage attributable to human error.

If it is felt the annual inspections will solve safety related problems I would suggest motor carrier personnel be licensed to do their own in-house inspections.

Sec. 315. (a) Heavy Truck Research. The Secretary should also insert wording to the affect that studies will also be conducted involving enforcement problems as they relate to the manner in which trucks are driven. Traffic law enforcement should be a concern for research.

Sec. 120. (a) Hazardous Materials. The Secretary of Transportation should be the sole evaluator of any programs, State, local, etc. because of the possibility of overlapping of programs from other Federal and State agencies.

Sec. 122. Routing and prenotification. I question some of the comments in Sec. 122.

Sec. 123. (a) Emergency Response Planning Grants. Planning Grants. We now have in use the following: Hazardous Materials Emergency Response Guidebook by the U.S. Department of Transportation, Yellow Freight System, Inc. Guide for the Proper Handling and Transportation of Hazardous Materials by Motor Carrier which is issued to all employees, and the use of Chemtrec from whom we are able to obtain guidance in case of a hazardous material emergency.

Senator **Danforth**. Mr. Duram.

STATEMENT OF R. V. DURHAM, DIRECTOR OF SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ACCOMPANIED BY BARTLEY O'HARA, LEGISLATIVE COUNSEL

Mr. **Durham**. Good morning, Mr. Chairman. I am R. V. Durham, director of safety and health for the IBT, and with me is Mr. O'Hara, legislative counsel.

We are pleased once again to be able to testify on this important measure. We certainly would like to thank you for the leadership that you have given in the field of highway safety and compliment you on the introduction of this bill.

As you probably know, we have a new general president of our organization, Jackie Presser, and he asked me to state to you that he has a sincere desire to work closer with the Government. He is certainly firmly committed to the safety of our membership, and he has asked me to convey to you that he strongly supports your bill, S. 1108.

As we all know, each year hundreds of millions of miles are driven by the commercial drivers. We have heard some figures already given this morning, and the average Teamster driver drives between 100,000 and 125,000 miles a year. Every year we lose approximately 1,000 heavy-duty truckdrivers—fatalities in accidents.

I do not think we are ever going to be able to reduce that to zero, but I think that we certainly firmly believe that this terrible death toll and the tens of thousands of injuries that a accompany these accidents can be reduced. When the Bureau of Motor Carrier Safety——

Senator DANFORTH. That 1,000, is that just your membership?

Mr. DURHAM. That is our membership, the heavy-duty truckdriver.

Senator DANFORTH. You are not counting truckdrivers who are not Teamsters? You are talking about just Teamsters?

Mr. DURHAM. We are talking about over-the-road, heavy-duty driver.

Senator DANFORTH. Whether a member of the union or not?

Mr. DURHAM. Right. And these figures are, of course, are pulled from the FARS report and so forth. Of course, there are other thousands of people that are killed and injured in the other vehicles.

The Bureau of Motor Carrier Safety, of course, inspects trucks on the roadside. We have heard about that and the reports are available. And anywhere from one-third to one-half of the trucks that are being inspected are placed out of service. They are so imminently dangerous that they are placed out of service. It is not just a violation. But those are the figures that distrub us, and we see them because they have a mechanical defect or because the driver has exceeded the limit on the driving hours.

Yet the Bureau of Motor Carrier Safety can only inspect a very small number. I think in 1980 they inspected 30,000 for the entire year, and we are talking about millions of vehicles out there on the highway. And when they find the carrier violations, the Bureau is very limited in the sanction that it may impose.

As a result, there is really no credible deterrent to the violator of the regulations. A majority of the carriers—and we just heard from Yellow here, and I would put them in that category—realize that it is in their best interest to operate safely and they take great pains to do so.

But we have irresponsible carriers that can choose, and they do, to violate safety regulations, secure in the knowledge that detection is unlikely, and if his violation is detected the penalty is light or none at all. Therefore, we feel that title III of S. 1108 is needed to rectify the situation and put teeth in the Bureau's enforcement effort, and we support its speedy enactment.

Turning to specifics of the bill, there are several provisions that we feel that would constitute real advances in safe regulatory authority with a clear mission to protect both the public and the diver: powers to enter and inspect, the duty to investigate the complaints of employees, using the worker as the first line of detection for unsafe operation, and a penalty structure that allows DOT to levy civil forfeiture fines for violations of safety regulations.

There is three provisions in the bill that I think are worth a special note, and we strongly support them. One is the joint DOT study of the health hazards. We have recently learned of a report by the National Cancer Institute, which study shows that drivers in the industry with more than 10 years seniority have a high incidence of bladder cancer, 5 times more often than the general population.

Second, the annual inspection, which there has been a lot of discussion on this morning. We think this is an excellent idea, and we would certainly agree with the Chairman of the ICC that maybe it should be semiannual instead of annual.

I do not agree with the comment that was made by one of the speakers that you are going to put a truck out of service for an entire day. But we think whatever the number of hours this truck will be out of service is certainly worth the cost. We believe that it is in the direction of preventive maintenance and would help discourage some of these accidents that we are finding out on the highway.

Third, of course, the heavy truck research that is mandated and funded by this provision. We spoke earlier this spring on that problem and they have just practically cut out the funding in heavy truck research, and we think this is needed.

In summary, let me just finish by saying that we believe that the bill has been a long time in coming. It represents a lot of compromises on the part of different interest groups. When we were debating and thrashing this out, some of these provisions in the earlier S. 1390, there were some things we did not particularly like, some of the things the industry did not particularly like. But it represents the best thinking of the interested parties.

We want to say again that we are grateful to you for sponsoring this legislation, and we would call on all other members of the trucking industry community to join with us in working for its passage.

Thank you, Mr. Chairman.

Senator DANFORTH. Thank you, sir.

You favor annual inspection or even more frequent inspection, as opposed to roadside inspection. We have heard several witnesses testify today that they favor roadside inspection. What is better about regular as opposed to roadside inspection?

Mr. DURHAM. Well, we certainly support both. We support the roadside. We think that is needed because of what we are finding out there on the highway. But the annual inspection will afford an opportunity to find many of the problems, especially in the braking systems.

Now, someone has mentioned earlier that a driver does a pretrip and posttrip inspection and that is true, Mr. Chairman. But that is a visual inspection, and a thorough inspection of that equipment is more, as we would envision it, would be more than what the driver does.

Senator **Danforth**. Do you think that there is sufficient deterrent in the present law to safety violations?

Mr. **Durham**. Definitely not.

Senator **Danforth**. Why not?

Mr. **Durham**. Well, you do not have the staffing, you do not have the manpower, you do not have the law. There is just so many problems that we have, again not taking anything away from the many carriers that we have contracts with that have excellent safety programs.

We are dealing with an industry that is very diversified—private carriers, contract carriers, common carriers, independent operators. And each of those views things differently, I guess.

We just feel that the law, the present staffing and the manpower is completely inadequate.

Senator **Danforth**. What is your position with respect to penalty levels?

Mr. **Durham**. That is one of the areas I guess that we did a little compromising in. We felt like it was kind of triple jeopardy on the driver to levy a civil fine on the driver, because under OSHA, as you are probably aware, they do not fine the employee, they fine the employer. Currently the driver is faced with not only paying a fine if he is caught violating the law, he is faced with losing his job under the disciplinary programs of the carriers. The civil fine is really a triple kind of a whammy.

But we compromised out and we support the provision of the bill as it is presently written.

Senator **Danforth**. Several witnesses have testified that about 5 to 10 percent of accidents are equipment failure and the rest are not equipment failure. Does that indicate to you that we should minimize the equipment failure problem? Is it a minor problem?

Mr. **Durham**. It certainly is not, Mr. Chairman. There is a lot of debate as to what percentage of the accidents are caused by the equipment versus the driver. Unfortunately, the nut behind the wheel argument or concept I think is overdone. When you have a driver going down the interstate or going down the West Virginia Turnpike and the front tire blows and he goes off into a ravine, it is very easy to say the driver went to sleep and the tire was blown out in the accident. Dead men do not tell tales.

We have seen data that goes anywhere from 6 to 12 percent on accidents caused by equipment. But for the sake of discussion, let us assume that is only 10 or 12 percent. An accident, when you are looking at 10 or 12 percent, any one of those accidents can be total disaster. I think that is one of the problems that Connecticut had recently in their argument on the twins bill is the accident that happened up there at the toll booth, and it is understandable that the Governor and the people that are elected by the constitutuents are going to express concern.

Senator **Danforth**. Mr. Durham, thank you very much.

Mr. **Durham**. Thank you.

Senator **Danforth**. We have another vote on the floor of the Senate, and we have five more witnesses. So I am going to go over and vote right now, and then we will proceed with Mr. Kelley.

[Recess].

Senator **Danforth**. Mr. Kelley.

STATEMENT OF BEN KELLEY, SENIOR VICE PRESIDENT, INSURANCE INSTITUTE FOR HIGHWAY SAFETY

Mr. **Kelley**. Thank you, Mr. Chairman.

The role of truck size and weight in highway crash deaths recently was documented in a research study published by our Institute, which is attached to my testimony. I will summarize that note's findings and I will then discuss the piece of the problem that has been long known to Government and private sector decisionmakers and yet continues to be overlooked, even as trucks become bigger and heavier and the cars that crash become smaller, and that is the huge dispartity between braking capabilities of large trucks and those of cars.

Large trucks are very disproportionately involved in fatalities. When a large truck and an automobile crash with a fatal result, overwhelmingly it is the automobile occupant who is killed, and as the disparity between car and truck sizes widens, the situation is growing worse.

In 1977 a car occupant was 22.9 times more likely than a truck occupant to be killed in a fatal large truck-car crash. In 1980 the car occupant was 30.6 times more likely to be killed. Small car occupants are at an even greater risk than these figures suggest. On the average for the 1978 to 1981 period, an occupant of a small subcompact was 62.2 times more likely to die than a large truck occupant in a fatal crash between those two vehicles.

While trucks have a lower crash rate per mile than cars, their fatal crash rate is significantly higher. The overall crash rate for large trucks in 1978 was 474 per million vehicle miles, compared to 825 for cars. The fatal crash rate for the large trucks, however, was 5.3 per 100 million vehicle miles, compared to 2.8 for cars.

Combination trucks have almost twice the crash rate of straight trucks, 504 per 100 million vehicle miles traveled compared to 351. They also have a very high fatal crash rate.

The basic safety question raised by the recent Federal provisions increasing truck size and weight is whether those provisons are likely to increase the already large numbers of deaths and injuries resulting from crashes involving large trucks. Increases could result from higher truck crash frequencies, greater crash severities, or both. We conclude, on the basis of available reseach, that those new provisions will almost certainly increase the magnitude of the truck crash problem.

In addition to the data I have already mentioned, we note that research projects done for the Department of Transportation have shown twin tractor-trailiers to have substantially higher crash involvement rates than single tractor-trailers, and those of course will be permitted by the new legislation. These results are shown in tables in my testimony.

Sharing the road with large trucks in a hazardous business for automobile occupants, even more so because, as their brake systems are presently designed and manufactured, trucks cannot and do not have to stop in anything like the same distance as automobiles. In simple terms, this means that when a car driver slams on his brakes to stop in an emergency, he or she stands a needless and frightening chance that the big truck, behind will not be able to stop in the same distance, and instead may smack into or run over the car and the people inside it.

All too typically, trucks have less than half the stopping capability of cars. The situation and its technological solutions have been known for years to responsible officials in the Government and the trucking industry. Yet today, as cars grow even smaller and under Federal approval trucks grow larger, there is no meaningful Federal regulation of any kind to prescribe maximum stopping distances for trucks.

To examine the disparity between automobile and large truck braking capabilities and requirements, some background is in order. The situation for automobiles is that stopping distance performance under Federal requirements are for 216 feet or less from 60 mile an hour braking speeds. Many cars substantially exceed that standard, very substantially.

But for large airbrake-equipped trucks with which these and other cars share the highways, the situation is very different and very disturbing. The only Federal requirement affecting their stopping distance is a very weak one of long years' standing, imposed by the Bureau of Motor Carrier Safety, requiring that at 20 miles an hour a truck be able to stop in 35 to 40 feet.

There presently is no other kind of standard. Yet, as MHTSA's own tests showed, the large trucks actually can require as much as 375 feet to stop when braking at 60 miles an hour, depending upon conditions. That is very frightening news for the automobile occupants.

There is a long, long history of Federal awareness of this problem and of technological availability to solve the problem, and that is documented in my testimony. That history, which began in the late 1960's and continues up to today, includes a very interesting memorandum submitted to NHTSA in 1976 pointing out the problem and the need for solutions.

NHTSA itself claims that getting better brake performance on large trucks is "priority rulemaking, significant because of the level of public and congressional interest." Yet since early 1980 the Agency has done nothing to make good on that belief. In 1980 it simply issued an advance notice, a vague expression of general intent to eventually replace the suspended requirements of its Federal motor vehicle safety standard 121 with workable stopping distance standards for large trucks.

But that is where the matter stands today, with no further action. Meanwhile the trucks grow larger, the automobiles smaller. The car driver who looks in his rear view mirror, and is alarmed to find a huge truck behind him, has a right to be afraid.

I would be happy to answer any questions.

Senator DANFORTH. What do you think we should do to try to reduce the number of truck-car crashes?

Mr. KELLEY. Well, I have pursued one approach in this testimony, and that is a very, very substantial closing of the stopping distance gap between large trucks and the cars with which they share the roads. There is no technological reason that cannot be done today. All of the rulemaking apparatus is in place at NHTSA to do it. It is simply a matter of inaction.

There are other pieces and many of them are addressed in your bill. One that I will mention in a moment that is not addressed in the bill accept in a general way, under your call for additional research into the heavy truck safety problem, is that of the speed of trucks.

First, though, there has been a good deal of talk this morning about the role of human error versus the role of the vehicle, and that may be somewhat confusing to those trying to learn something about the problem.

Consider, if you would, a truck driver tailgating a car. That is human error. Consider then an emergency situation in which the car, with its much better braking performance, slams on the brakes—and the truck, with its poorer designed braking performance, slams on its brakes and cannot stop in time. That becomes a design or mechanical aspect of the vehicle. Both are at play, but the result, however the semantics are cut, may be one, two, or three dead people in the car ahead.

Turning to the factor of the speed of that large vehicle that is sharing the road with the cars. There is no excuse—and I am sure nobody in the trucking industry would argue one—for trucks to be going 65 and 70 miles an hour along crowded highways full of cars. And yet that, as any of us who drives know, is the case today.

Why trucks continue to be permitted by design to have those sorts of speed capabilities, when the result can be such tremendous risk for the occupants of cars that they hit, is beyond me. And again, NHTSA has the authority, and I believe the Bureau of Motor Carrier Safety has some authority, to see that those speeds by design are limited to the national legal maximum speed. That also has not been done.

Senator DANFORTH. And there is no reason that it could not be?

Mr. KELLEY. I know of none whatsoever.

Senator DANFORTH. Just desiging it into the truck?

Mr. KELLEY. That's correct.

Senator DANFORTH. A lot of truck drivers complain to me about the 55 mile an hour speed limit, but I have never noticed any truck that has been driven 55 miles an hour.

Mr. KELLEY. Nor have I, and I am sure I share with many others who drive automobiles the very real fear that one experiences when finding a truck moving up behind you at 65 or 70 miles an hour.

Senator DANFORTH. Do you have any other advice for us generally on the bill or on truck safety?

Mr. KELLEY. I commend you and the committee for moving forward in this very important direction of trying to bring needed improvement into the area of motor vehicle safety, including driver and motor vehicle, motor carrier fitness, including a much tougher look through inspection processes at what is happening out there on the highway and the condition of vehicles, and for right now continuing to bring public scrutiny to bear on the problem.

I have tried this morning to point out two aspects that I believe you may want to be concerned with as you proceed in this area, and we will pass this testimony to NHTSA and BMCS as well so that it is aware of those concerns.

Senator DANFORTH. Well, that is very helpful and yours are very practical suggestions. Do you have any view on the annual inspection-roadside inspection issue?

Mr. KELLEY. There is to the best of my knowledge, Senator Danforth, a paucity of research showing specifically what effects one gets out of what kinds of inspection programs. That may well be because there just have not been any good inspection programs to research.

It is widely known and accepted, and a tragic joke within the highway safety community, that the Bureau of Motor Carrier Safety is a tiny, understaffed. underfunded, undermotivated creature that has been given responsibility totally out of proportion to its size and its will to look after the safety aspect of the tremendous trucking industry that operates across our Nation.

I think that until the resources are made available to put up sound, perhaps alternative experimental inspection programs for motor vehicles, we just are not going to know how much of a benefit—and it may be a large one—we can get out of such programs. I do believe that the Bureau of Motor Carrier Safety's own experience from early demonstration programs shows very strong support for the conclusion that inspection programs, if truck operators believe they are going to be imposed, will make a difference in terms of bringing down crash severity and frequency and bringing up the general level of safety maintenance of trucks.

We would be happy to poke about in our files and in the open files of the Government and see what research does bear on that and make it available to the committee.

Senator DANFORTH. That would be very, very helpful.

Mr. KELLEY. I would be happy to do it.

Senator DANFORTH. Some of the testimony earlier about the believed percentage of accidents caused by equipment failure as opposed to the personal factor, you do not view that as being an argument for downplaying the importance of equipment?

Mr. KELLEY. Oh, no, not at all. I think Mr. Durham made an excellent point when he described the difficulty of reconstructing, after the mayhem is over and the wreckage is lying alongside of the road, what happens and what the sequence of events and contributing factors were to a crash that may have killed the so-called distinctions between human and a truck driver and many people in cars.

Frankly, I find mechanical errors are secondary, confusing and rather diverting from the central question, which is how do we get more safety designed into trucks, how do we get them better maintained, how do we get what we can to reduce the human error behind the wheel, while accommodating and compensating for that error when we know that we have done the best we can and it is still going to be there.

Senator DANFORTH. Very well put. Thank you very much, sir.

Mr. KELLEY. Thank you, sir.

[The statement follows:]

STATEMENT OF BEN KELLEY, SENIOR VICE PRESIDENT, INSURANCE INSTITUTE OF HIGHWAY SAFETY

Mr. Chairman, at your invitation I am appearing today to discuss the problem of fatal and injury-producing crashes involving large trucks—a problem that falls far more heavily on automobile drivers and passengers than on truck occupants.

The Insurance Institute for Highway Safety is an independent, nonprofit, public service organization dedicated to reducing the losses—deaths, injuries, and property damage—resulting from crashes on the nation's highways. Supported directly or indirectly by companies writing most of the motor vehicle insurance in the United States, the Institute conducts research involving a wide range of precrash, crash, and postcrash factors that contribute to the hugh losses resulting from highway crashes.

Each year, motor vehicle crashes kill tens of thousands and injure millions of people. Such crashes are the leading cause of spinal cord and head injury, as well as major contributors to facial lacerations and fractures, and other kinds of trauma. The detailed losses are well known to this committee from its many past hearings on highway loss issues.

The role of truck size and weight in this carnage recently was documented in a Research Note published by the Institute, the Status Report version of which is Attachment 1 [1] to this testimony. In the next few minutes I will summarize the Note's findings. Then, I will discuss a piece of the problem—the hugh disparity between braking capabilities of large trucks and those of cars—that has been long known to government and private sector decisionmakers and yet continues to be overlooked even as trucks become bigger and heavier, and the cars they crash with become smaller.

Large trucks (10,000 pounds and greater) are very disproportionately involved in fatalities. When a large truck and an automobile crash with a fatal result, overwhelmingly it is the automobile occupant who is killed. And, as the disparity between truck and car sizes widens, the situation is growing worse. In 1977, a car occupant was 22.9 times more likely than a truck occupant to be killed in a fatal large truck-car crash; in 1980, the car occupant was 30.6 times more likely to be killed.

TABLE 1.—INCREASED RISK OF DEATH [1] FOR CAR OCCUPANTS RELATIVE TO TRUCK OCCUPANTS IN FATAL CRASHES OF LARGE TRUCKS AND CARS

	1977	1978	1979	1980
Truck type:				
Single-unit	16.7	17.8	22.9	25.6
Combination	26.0	28.9	30.8	32.9
All large trucks	22.9	25.2	28.6	30.6

[1] For example, in 1977 a car occupant was 22.9 times more likely than a truck occupant to be killed in a fatal large truck-car crash; in 1980, 30.6 times more likely.

Source: Eicher, J. P., Robertson, H. D., and Toth, G. R.. "Large Truck Accident Causation," National Highway Traffic Safety Administration technical report No. DOT HS–806–300, July 1982.

Small-car occupants are at an even greater risk than these figures suggest. On the average, for the 1978–1981 period, an occupant of a small subcompact was 62.2 times more likely to die than a large truck occupant in a fatal crash between the two vehicles.[2]

In 1978, the most recent year for which a detailed analysis of truck crashes was made, large trucks were involved in 432,000 crashes, about six percent of the national crash total. Yet they contributed to 12 percent of the national total of fatal crashes. A principal reason for the overinvolvement of large trucks in fatal crashes is the difference in weight between trucks and other involved vehicles. In 1977, about 74 percent of fatal crashes involving large trucks also involved other vehicles, and 65 percent of these other vehicles were passenger cars. More than 3,000 car occupants deaths resulted from such crashes.

Thus, while trucks have a lower crash rate per mile than cars, their fatal crash rate is significantly higher. The overall crash rate for large trucks in 1978 was 474 per million vehicle miles compared to 825 for cars. The fatal crash rate for large trucks, however, was 5.3 per 100 million vehicle miles compared to 2.8 for cars. Combination trucks (i.e., tractor semitrailers or tractor semitrailers plus trailers) have almost twice the crash rate of straight trucks—604 per 100 million vehicle miles traveled compared to 351. Combination trucks also have a very high fatal crash rate—8.6 per million vehicle miles traveled.

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[1] The attachments were placed in the committee files.

[2] Institute calculations based on data from the National Highway Traffic Safety Administration's fatal accident reporting system.

The relevance of these figures is underscored by the fact that the Surface Transportation Assistance Act of 1982 (P.L. 97-424) provides for substantial increases in the sizes and weights of trucks in general, and also permits the use of twin trailers—so-called "doubles"—nationally. The basic safety question raised by the new federal provisions for truck size and weight, as our Research Note points out, is whether they are likely to increase the already large numbers of deaths and injuries resulting from crashes involving large trucks.[3] Increases could result from higher truck crash frequencies, greater crash severities, or both.

The Note concludes on the basis of available research that these provisions "will almost certainly increase the magnitude of the truck crash problem". In addition to the data already mentioned relating to the weight and truck-auto size disparity issue, it notes that research projects done for the U.S. Department of Transportation have shown twin tractor trailers to have substantially higher crash involvement rates than single tractor trailers. These results are shown in the tables on the following page.

TABLE 2.—TRUCK CRASH RATES PER 100 MILLION MILES—SINGLES AND DOUBLES BY ROADWAY TYPE

	Rural		Urban	
	Freeway	Nonfreeway	Freeway	Nonfreeway
Truck type:				
Singles	110	99	214	93
Doubles	228	468	388	428

Source: Vallette, G. R., McGee, H. W., Sanders, J. H., and Enger, D. J., "The Effect of Truck Size and Weight on Accident Experience and Traffic Operations, vol. 3: Accident Experience of Large Trucks." Federal Highway Administration report No. FHWA/RD-80/137. Washington, D.C., July 1981, PB No. 82 139726.

TABLE 3 —TRUCK CRASH INVOLVEMENT RATES PER 100 MILLION MILES [1]

[Intercity use only]

	Fatal (FARS 1976-78)	Injury (BMCS 1976-78)
Trailer type:		
Singles	6.5	47.9
Doubles	9.5	126.3
Bobtails	90.0	913.5

[1] Table 3 also shows that crash involvement rates for bobtail tractors—those not pulling trailers—are substantially higher than for tractors pulling either single or double trailers.

Source: Cambell, K. L., and Carsten, O., "Fleet Evaluation of FMVSS 121," UM-HSRI-81-9, Highway Safety Reseach Institute, final report National Highway Traffic Safety Administration contract No. DOT-HS-6-01286, August 1981.

Sharing the road with large trucks is a hazardous business for automobile occupants-even more so because, as their brake systems are presently designed and manufactured, trucks cannot and do not have to stop in anything like the same distance as automobiles. In simple terms, this means that when a car driver slams on his brakes to stop in an emergency, he or she stands a needless and frightening chance that the big truck behind won't be able to stop in the same distance and instead may smash into or run over the car and the people inside it. All too typically, trucks have less than half the stopping capability of cars.

This situation and its technological solutions have been known for years to responsible officials in government and the trucking industry. Yet today, even as cars grow smaller and—with federal legislative sanction—trucks grow even larger, there is no meaningful federal regulation of any kind to prescribe maximum stopping distances for large trucks.

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[3] The increase in crash rates for doubles far outweighs the benefits that are argued to exist because fewer doubles replace larger numbers of smaller trucks.

To examine the disparity between automobile and large truck braking capabilities and requirements, some background is in order.

The situation for automobiles is that stopping distance performance is governed by Federal Motor Vehicle Safety Standard 105, which deals with hydraulic brake systems. It requires stopping distances of 216 feet or less from 60 mph braking speeds. Many cars substantially exceed the standard. For example, Consumers Union recently reported for 1982 model cars that from 60 mph the Dodge Charger 2.2 and Aries SE stopped in 165 feet, the Toyota Celica GT in 170 feet, and the Ford Fairmont Futura and Pontiac Phoenix in 180 feet.[4]

For the large, air brake-equipped trucks with which these and other cars share the highways, the situation is very different and very disturbing. The only federal requirement affecting their stopping distance is one of long years' standing imposed by the Bureau of Motor Carrier Safety on trucks in interstate service;[5] it requires that at 20 mph a truck be able to stop in 35-40 feet[6] depending on configuration. There presently is no federal motor vehicle safety standard governing the stopping distance performance of new, large trucks. Yet, as the National Highway Traffic Safety Administration's [NHTSA] own tests show, these vehicles can require as much as 375 feet to stop when braked at 60 mph, depending on conditions.[7] For automobile occupants whose vehicles can stop in less than half that distance, that's frightening news indeed.

The huge disparity between the stopping distances of large trucks and automobiles has no technological justification. Improvements are available and in use on some trucks, both here and in Europe, to substantially shorten the stopping distances of large trucks without loss of directional stability. Disc brakes, anti-lock devices, and load proportioners are examples.

The disparity is due, in fact, to NHTSA's failure to pursue the necessary rulemaking that would lead to adequate stopping distance standards for large trucks. That failure is inexcusable. It defies a public record, now dated back for more than a decade, of recognition that the problem exists and needs to be solved. For example:

In October 1967, more than 15 years ago, the Department of Transportation issued its first advanced notice of proposed rulemaking for the adoption of a large truck braking standard.[8]

In November 1972, the National Transportation Safety Board released a Special Study, Commercial Motor Vehicle Braking (NTSB-HSS-72-5) urging that NHTSA and the Bureau of Motor Carrier Safety substantially reduce the incompatability of braking performance of passenger cars and commercial motor vehicles and eliminate other braking inadequacies in commercial vehicles.

In 1974, the American Trucking Association in Congressional testimony supported the increase in truck weight based on the Federal Motor Vehicle Safety Standard 121 (air braking standard), soon to be effective.[9]

In 1975, NHTSA put into effect its Federal Motor Vehicle Safety Standard 121, setting requirements governing both large vehicle stopping distances and "no-lockup" performance levels. A federal appeals court, later suspending the standard because of claimed unreliability of first-generation systems used to meet the no-lockup requirements, concluded that decreasing the stopping distance disparity between automobiles and heavy trucks is a "reasonable and practical" goal. *Paccar, Inc.* v. *NHTSA,* 573 F.2d 632 (9th Cir. 1978).

In March 1976, in House oversight hearings, the Institute described the seriousness of the truck-automobile crash problem and emphasized the need for steps to effectively close the stopping distance gap between the two types of vehicles. Appended to that testimony was a January 1976 report on truck safety to NHTSA's National Motor Vehicle Safety Advisory Council. It pointed out that although less than one percent of all registered vehicles in the United States came under the designation of "large tractor trailers or other combinations" (40,000-82,000 pounds GVW), that one percent is "involved in 2.6 percent of all accidents and 7.3 percent of all fatal accidents." At the top of its list of recommended NHTSA countermeasures to the problem: "Better brakes for trucks."

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[4] "Four Medium-Sized Sedans," Consumer Reports, February 1982, page 97. "Four Sporty Cars," Consumer Reports, August 1982, page 394.

[5] 49 C.F.R. Sec. 393.52 (1982).

[6] Extrapolated to that speed, the automobile stopping standard described above requires that cars braked at 20 mph stop in a maximum of 25 feet, or nearly a third less distance.

[7] Submission dated February 7, 1980, to dockets 79-30 and 75-16 by Office of Heavy Duty Vehicle Research, NHTSA.

[8] 32 Fed. Reg. 14279 (October 14, 1967).

[9] Statement of Edward V. Kiley, Vice President, American Trucking Association before the Subcommittee on Transportation, Senate Committee on Public Work, March 26, 1974.

NHTSA itself claims that getting better brake performance on large trucks is a "priority rulemaking" matter, "significant because of the level of public and Congressional interest". It is "necessary to prevent and reduce the severity of accidents involving heavy vehicles by providing increased accident avoidance capability", the agency claimed in its rulemaking agenda published earlier this year.[10]

Yet since early 1980 the agency has done nothing to make good on that belief. Its action then was simply to issue an "advanced notice"—a vague expression of general intent to eventually replace the suspended requirements of Federal Motor Safety Standard 121 with workable, needed stopping distance standards for large, air brake-equipped trucks—and that is where the matter stands today.

Meanwhile, the trucks grow larger, the automobiles smaller. The car driver who looks in his rear-view mirror and is alarmed to find a huge truck behind him has a right to be afraid.

Senator **Danforth**. Mr. Sherlock.

STATEMENT OF NORMAN R. SHERLOCK, PRESIDENT, AMERICAN BUS ASSOCIATION, ACCOMPANIED BY JOHN J. DWYER, CHAIRMAN, SAFETY COMMITTEE

Mr. **Sherlock**. Good morning, Mr. Chairman. My name is Norman Sherlock, president of the American Bus Association which has about 2,800 members. With me is Jack Dwyer, who is the chairman of our safety committee, and he is prepared to address the details of S. 1108.

In the interest of brevity, I would like with your permission to simply file my statement and yield my time to Mr. Dwyer, with one observation; that is, that the consistent goal of the association, which dates back to 1926 in its origin, has been to be sure that all buses are safe, that all buses which operate on the highways and roads be subject to regulation and inspection.

We think it is time for a meaningful bill and we commend you for starting down the road. Thank you, sir.

Mr. **Dwyer**. Mr. Chairman, I am Jack Dwyer. I am president of the Vermont Transit Co. of Burlington, Vt., but I testify here on behalf of the American Bus Association. I am the chairman of their safety committee.

Over the years travel by bus has been more than 20 times safer than travel by automobile. However, we are acutely aware that since deregulation hundreds of new carriers, most of them without previous intercity experience, have entered the market. The lowering of entry barriers for both bus and truck operators demands intensification of legislation, regulatory and managerial efforts to improve commercial and motor vehicle safety.

We commend the effort in dealing comprehensively with the critical issues in motor vehicle and highway safety. My testimony will be confined to title III.

The American Bus Association favors the objectives of the bill. It is, in general, in accord with the specific provisions. We offer the following suggestions for clarification and improvement.

The most significant feature of the bill to us is the enormous expansion of Federal safety jurisdiction which results from Federal assertion of safety jurisdiction over the interstate transportation of buses owned and operated by local school districts and over private bus transportation performed in vehicles designed to transport more than 10 passengers.

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[10] NHTSA's Semi-Annual Regulatory Agenda, 48 Fed. Reg. 18260 (April 25, 1983).

We feel every bus should be subject to Federal safety jurisdiction, including school, transit, and private, and that the language be very specific in that regard. We do not oppose the proposed enlargement of Federal safety jurisdiction. Congress should recognize, however, the additional responsibilities given to the Secretary of Transportation cannot be discharged without a substantial increase in funding.

Section 309 of the bill would require the Secretary to investigate all nonfrivolous written complaints alleging a material safety violation and to notify the complainant of the findings of such investigation. This increases the number of potential respondents at least tenfold. We think the Secretary should have some discretion as to whether everyone is fully investigated and reported or whether in some cases some phone calls may handle the situation.

We have no objection to section 310 increasing penalties. We would like to emphasize, however, that the basic problem today is not inadequate penalties but inadequate enforcement. Making penalties more severe will not enhance motor vehicle safety unless the number of safety agents and inspectors is increased.

Section 313(b) of the bill requires the Secretary of Transportation to establish Federal standards to be met by required equipment on commercial motor vehicles. We believe the Secretary should be empowered to establish not only Federal standards for required equipment on buses but also standards relating to frequency of inspection and inspection procedures.

Such standards may be contemplated by the direction to the Secretary to establish a procedure for State implementation of the inspection requirement. We believe the language in subsection (b) should be broadened by providing that the Secretary shall by rule establish Federal standards to be met for the inspection of commercial motor vehicles used in the transportation of passengers.

Bus safety would not be enhanced materially by subsection (a) of section 313 of the bill requiring commercial motor vehicles to submit to and pass an annual inspection of all safety equipment. Responsible bus operators require buses to be inspected at the end of each run and require a close inspection and heavy-duty maintenance much more frequently than once a year.

The requirement of an annual inspection implies erroneously, in our opinion, that programs of random inspection are not equally effective. The Commercial Vehicle Safety Alliance, a consortium of 10 Western States and 2 Canadian Provinces, has established a program of random inspection and we think it should be encouraged.

Section 313 of the bill seems to contemplate that an inspection of commercial vehicles under federally approved procedures in one State would be accepted by all other States. The American Bus Association feels that that is imperative and urges that the implied reciprocity be made explicit.

Section 314 directs the Secretary of Transportation and the Commission to establish a procedure to determine the safety fitness of persons. We are concerned that that should be retroactive to November 19, 1982, when the Bus Deregulatory Act was passed, because many people have entered the industry since then.

Thank you very much.

Senator **Danforth**. Thank you. Why do you think buses are safer than travel by automobile—because they are bigger?

Mr. **Dwyer**. I think that is one reason. I think that the drivers are professional drivers. I think that the one thing that does make our drivers safer many times is that the people that ride with them tell us what goes on; therefore, there is more of a reason for them to be a bit more careful.

Senator **Danforth**. You say that professional drivers, meaning what, that they undergo some special training?

Mr. **Dwyer**. They do. They undergo substantial training. They drive considerably more often than the average individual. In addition, that is their job. When they come to work this is where their mind has to be as opposed to myself or anyone else going down a highway. We may have a tendency to think of a number of other things we have to do that day as opposed to drive that vehicle.

Senator **Danforth**. What kind of training do they undergo?

Mr. **Dwyer**. In our case at Vermont Transit we run a 7-week school when we first bring a driver to work for us. Whether he is experienced in large vehicles or not, he goes through a 7-week school where he first of all is trained on a 1 to 1 basis and then spends a substantial period of time at the tail end of the school and continuing on learning routes and driving with experienced professional drivers.

Senator **Danforth**. Now in the area of bus transportation you have stressed that all bus companies should be subject to safety regulations. Are there some types of bus transportation that are less safe than others?

Mr. **Dwyer**. Frankly, I think solely because of the vehicle involved that a school bus operating over an interstate highway is a greater potential danger than a vehicle such as we operate because of the fact, the way it is made and it can really, if it gets into a serious accident, it becomes similar to a tin can.

Senator **Danforth**. Is a school bus less safe on an interstate highway that it is on a State road?

Mr. **Dwyer**. I would think it is. I do not think the vehicle is, frankly, constructed with a vision toward much interstate operation.

Senator **Danforth**. Gentlemen, thank you very much.

Mr. **Dwyer**. Thank you.

[The statements follow:]

STATEMENT OF NORMAN R. SHERLOCK, PRESIDENT OF THE AMERICAN BUS ASSOCIATION

Mr. Chairman and the members of the committee, my name is Norman R. Sherlock. I am the President of the American Bus Association.

ABA is the national trade association of the intercity bus industry. Our 2,800 members include bus operators who provide regular route scheduled service as well as tours and charters, travel and tourism entities from all over the country who are dependent on buses to bring them business, and associate members who are the manufacturers and suppliers for industry.

Jack Dwyer, Chairman of our Safety Committee, will address Title III of S. 1108 in detail in his testimony. I want to take just a few minutes and share some of the industry's general thoughts and concerns on safety.

One of the hallmarks of the intercity bus industry is its outstanding safety record, and maintaining it in a new deregulated environment will be one of our greatest challenges. One of the last unfinished tasks of deregulation is to ensure the safety of the public, through adequate regulation and enforcement.

We are today dealing with a fundamental question of the attitude of government about safety. Viewed from any angle, the basic premise should be that all buses must be safe, no matter who is using or providing the service wherever they operate.

This goal must be realized in the face of some people's contention that deregulation now means a "hands-off" stance by government and despite others' protestations that there are practical or budget problems which make enforcement difficult.

The simple fact is that this must be done, in spite of everything. Economic regulation is different from safety or operational regulation. The responsibility for public safety can be traced back to the Constitution of our country wherein the protection of life and property of our citizenry is the most fundamental obligation of government. The dilemma for the government and for the industry is how we can get this—safety of all buses—done together.

The American Bus Association, which dates back to 1926, has always regarded safety as a top priority concern. Now, with deregulation, this becomes more important than ever.

We have been working with the Department of Transportation, the Interstate Commerce Commission, and the Congress for some time to come up with new legislation which will achieve several objectives:

First—a comprehensive safety program with teeth in it to be sure that all buses are subject to inspection and regulation. Special attention has to be given to closing the loophole whereby private groups and sham operators are allowed to use slipshod or unsafe equipment. The same standards must also be applied to carriers who try to operate without even bothering to obtain authority, and effective enforcement pressure must be brought to bear. Then, there must be a focus on what "fitness" means for applicants to operate tours and charters—if it's going to mean anything.

The second objective we want to achieve is uniformity among the states in their regulation of safety. Legitimate bus companies should be able to go as freely from New York to California as someone in their private car. Yet, there is a wide variety of nuisance, practices requirements among various states which make bus operations difficult. For years, we have been promoting reciprocity of inspection.

These are major initiatives and if we can make significant progress on them in this Congress it will be a banner year for safety. The efforts of this Committee will have much to do with making sure that bus safety is meaningful to the public in the deregulated world. Safety should not be a casualty of deregulation. Rather, it becomes more important than ever.

STATEMENT OF JACK DWYER, PRESIDENT OF VERMONT TRANSIT CO.

Mr. Chairman and members of the committee, my name is Jack Dwyer. I am the President of Vermont Transit Co. of Burlington, Vermont, but I testify here today on behalf of the American Bus Association. I am the Chairman of the Association's Safety Committee. Members of the Committee are listed at the end of my prepared statement.

The American Bus Association is the national trade association for the intercity bus industry. The Association has approximately 2,800 members, including bus operators providing regular-route service, charter and tour operators, and special operators; travel and tourism members who are dependent upon buses to bring them business—theme parks, hotels and motels, restaurants, cities and States and other destinations—and associate members who are manufacturers or suppliers to the bus industry.

The Association has approximately 725 operator members who are dedicated to maintaining and improving bus safety. That dedication is reflected in a superb safety record.

For the years 1978 through 1981, the passenger fatality rate per 100 million bus passenger miles was 0.01, 0.02, 0.13, and 0.01, respectively.[1] Over the years, travel by bus has been more than 20 times safer than travel by automobile. However, we are acutely aware of the dangers of complacency. Hundreds of new carriers, most of them without previous intercity operational experience, have entered the market under the liberal entry provisions of the Bus Regulatory Reform Act of 1982. The lowering of entry barriers for both bus and truck operators demands an intensification of legislative, regulatory, and managerial efforts to improve commercial motor vehicle safety.

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[1] Bus Facts, American Bus Association (1982) ed. p. 9. Source: Figures derived by ABA from ICC and Bureau of Motor Carrier Safety data.

We commend Senator Danforth, Chairman Packwood, and Senator Pell for dealing comprehensively with the critical issues of motor vehicle and highway safety. My testimony will be confined to Title III of S. 1108, the proposed Motor Carrier Safety Act of 1983. The American Bus Association favors the objectives of the bill and is in general accord with its specific provisions. The ABA Safety Committee has studied the bill and offers the following suggestions for clarification and improvement.

EXPANSION OF FEDERAL SAFETY JURISDICTION

Perhaps the most significant feature of the bill is the enormous expansion of Federal safety jurisdiction being proposed. That expansion would result from Federal assertion of safety jurisdiction over the interstate transportation of buses owned and operated by local school districts and over private bus transportation performed in vehicles designed to transport more than ten passengers.

An even greater expansion of Federal safety jurisdiction would be achieved by defining "commerce" in Section 304 of the bill to mean not only transportation between a place in one State and a place outside such State but also transportation which "affects" interstate commerce. This language makes Federal jurisdiction over commercial motor vehicle safety as broad as that which exists over labor-management relations or maximum hours of service and minimum wages. As a result, most intrastate bus operations, including those of local transit authorities, would be made subject to Federal safety regulation for the first time.

ABA does not oppose the proposed enlargement of Federal safety jurisdiction. The Congress should recognize, however, that the additional responsibilities given to the Secretary of Transportation cannot be discharged without a substantial increase in funding. Also, the large expansion of Federal safety jurisdiction should persuade the Secretary to refrain from regulating in areas where the costs of regulation are high in relation to anticipated benefits.

FEDERAL-STATE COOPERATION

Section 307(b) of the bill provides that the Secretary may delegate to a State such enforcement and investigatory functions as she deems appropriate to carry out the provisions of the new law. We support the proposal to delegate enforcement responsibilities to the States whenever appropriate. We hope that the authority will be delegated freely to the States and that the greater responsibilities assumed by the States will be adequately funded.

MANDATORY INVESTIGATION OF COMPLAINTS

Section 309 of the bill would require the Secretary to investigate all nonfrivolous written complaints alleging a material safety violation and to notify the complainant of the findings of such investigation. At a time when the Secretary's safety responsibilities are being vastly enlarged, we do not believe it is wise to curb the Secretary's discretion with regard to investigating alleged safety violations.

Complaints against motor carriers of passengers will be filed not only by employees but also by other carriers, passengers, and public interest groups. The number of potential respondents will be increased at least ten-fold by the proposed legislation. Under the circumstances, we believe it would be better to accord the Secretary some discretion about whether to investigate complaints and to submit findings on the investigations. If the Secretary concludes certain types of complaints can be handled satisfactorily by a phone call or two, she should not be required to launch a formal investigation, submit written findings, and supervise employer-employee relationships.

PENALTIES

ABA has no objection to Section 310 of the bill which would increase penalties for safety violations and would make most safety violations subject to both civil and criminal penalties. We would like to emphasize, however, that the basic problem today is not inadequate penalties but inadequate enforcement. Expanding the range of civil penalties and making penalties more severe will not enhance motor vehicle safety unless the number of safety agents and inspectors is increased.

BUS INSPECTION

A well-conceived Federal-State program of commercial motor vehicle safety inspection can pay large dividends in terms of accident reduction.[2] Such an inspection program is especially important when thousands of relatively inexperienced bus operators are entering the field. My observations on vehicle inspection are directed solely to bus operations. The Committee may conclude that truck inspection should be treated differently.

Bus safety would not be enhanced materially by subsection (a) of Section 313 of the bill requiring commercial motor vehicles "to submit to and pass an annual inspection of all [required] safety equipment . . ." A new intercity bus used to transport passengers in scheduled service may travel over 200,000 miles a year. Responsible bus operators require buses to be inspected at the end of each run and require close inspection and heavy-duty maintenance much more frequently than once a year.

The requirement of an annual inspection implies, erroneously in my opinion, that programs of random inspection are not equally effective. The Commercial Vehicle Safety Alliance, a consortium of ten Western States and two Canadian provinces,[3] has established a program of random inspection of vehicles both on the road and in terminals using a common set of inspection standards. Reciprocity is extended on the basis of a CVSA decal. The ABA Safety Committee has endorsed the objectives and programs of the Commercial Vehicle Safety Alliance. we would not want to see the work of the Alliance inhibited or downgraded by inflexible Federal requirements for commercial motor vehicle inspection.

The Commercial Vehicle Safety Alliance has succeeded in meeting the following goals:

Maximize upon the utilization of commercial motor vehicles, drivers, and cargo inspection resources;

Avoid duplication of inspection resources;

Advance uniformity of inspection procedures;

Expand the number of inspections performed on a regional basis;

Minimize delays in schedules incurred by industry inherent to inspection activity; and

Grant equal reciprocity to member States and Provinces for truck inspections.

The success fo the CVSA program in the State of Oregon is shown in the data set forth in appendix 2 to this statement.

Section 313(b) of the bill requires the Secretary of Transportation to establish "Federal standards to be met by required equipment on commercial motor vehicles." We believe the Secretary should be empowered to establish not only Federal standards for required equipment on buses but also standards relating to frequency of inspection and inspection procedures. Such standards may be contemplated by the direction to the Secretary to establish "a procedure for State implementation of the inspection requirement." We believe the language in subsection (b) should be broadened by providing that the Secretary: "shall, by rule, establish Federal standards to be met for the inspection of commercial motor vehicles used in the transportation of passengers."

UNIFORM STATE STANDARDS AND RECIPROCITY

Section 313 of the bill apparently contemplates that inspection under Federally approved standards in one State would be honored by all othe States. ABA favors that result but urges that the implied reciprocity be made explicit.

The bill also implies that the Federal inspection standards will produce more uniform inspection procedures at the State level. The need for greater uniformity should be expressed in the legislation and emphasized in the Committee's report.

Uniformity of commercial vehicle safety inspection standards as among the States and between the States and the Federal government is merely part of a much larger problem. We hope the Congress will move promptly toward achieving uniformity of State regulation of vehicle registration, fuel tax collection, and trip permits as recommended by the ICC and DOT.[4]

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[2] Attached hereto as app. 1 is a story from the Sarasota (Fla.) Herald Tribune of May 31, 1983, concerning a school bus which lost a wheel, injuring all 47 students aboard. The bus had not been properly inspected. Florida's annual mandatory vehicle inspection program was abolished in 1981.

[3] Alberta, British Columbia, Oregon, Washington, California, Colorado, Alaska, Idaho, Utah, Nevada, Missouri, and Arizona.

[4] The joint study of ICC and DOT was conducted under the authority of sec. 19 of the Motor Carrier Act of 1980 and submitted to the Congress in December 1982.

CERTIFICATION OF SAFETY FITNESS

Section 314 of the bill directs the Secretary of Transportation and the Commission to establish a procedure to determine the safety fitness of persons seeking new or additional operating authority. The required procedure would include specific requirements to be met in proving safety fitness and a means of determining whether applicants meet those requirements. ABA favors this section of the bill but believes it should be strengthened and, as amended, limited to motor carriers of passengers.

During the seven-month period in which the Bus Regulatory Reform Act has been in effect, about 500 person have applied for the first time for authority to transport passengers. More than 90 percent of the applicants have sought authority to transport passengers in charter and special operations between all points in the United States. Only a few of these carriers will ever seek additional operating authority. Hundreds more will apply for and receive operating authority prior to passage of S. 1108. All these carriers will escape safety certification unless Section 314 is amended.

With few exceptions, new entrants into the charter bus market are not required to prove their safety fitness. All that the ICC requires is an affirmation that the applicant will comply with the Federal Motor Carrier Safety Regulations. DOT does not make any check to insure that the new entrant meets the applicable standards of safety fitness.

Section 314 should be made retroactive to November 19, 1982, the effective date of the Bus Act, so that the new passenger carriers will be required to satisfy specific safety fitness requirements. There is obviously more reason to check the safety fitness of a newly-certificated carrier than that of a carrier which has compiled a good safety record and which seeks an extension of its operating authority.

CONCLUSION

With the modifications I have described, the American Bus Association favors enactment of the Motor Carrier Safety Act of 1983.

[From the Sarasota (Fla.) Herald-Tribune Dec. 31, 1982]

SCHOOL BUS THAT LOST WHEEL IMPROPERLY INSPECTED

ZELLWOOD.—The driver of a bus that lost a wheel and wrecked, injuring all 47 of the students aboard, hadn't properly inspected the vehicle before the Memorial Day weekend accident, the Florida Highway Patrol said.

Driver Nathaniel Bell failed to propertly check the wheel of the 1961 bus, Trooper Leonard Green said in citing Green for having defective equipment. The citation requires Green to show up in traffic court June 23.

All 47 of the students on the bus Saturday morning when it flipped over were rushed to area hospitals, but all but four were released after treatment for minor injuries. Three were kept overnight Saturday in Florida Hospital. A fourth, Yolanda Nelson, was released from the Orlando hospital Monday morning, authorities said.

Bell, an assistant principal at Eustis Middle Shcool who operates a small exercusion bus line, was taking the children to the Wet N' Wild amusement park in south Orlando when the right wheel spun off, authorities said.

Bell lost control of the bus, which spun 180 degrees and flopped onto its side in the median of U.S. 441.

Green said Sunday that the wheel fell off when the lugs nuts that held it to the axle sheared off. Green said Bell failed to inspect the bus wheel and lug nuts to ensure that they were in good shape.

"Periodic inspection should be considered mandatory, particularly with a bus that's being used to transport children, and especially since the state no longer has the inpsection program," Green said.

The state's annual mandatory vehicle inspection program was abolished in 1981.

Bell has been running weekend tours to amusement parks, mostly for Lake Country school children, since 1966.

Green said Bell's bus was designed to hold 36 passengers. He said the rest of the children sat in temporary seats in the aisles.

Althought the temporary seats were not bolted to the floor, Green said, they "were wedged in pretty tight, so they wouldn't slide forward or anything if the driver stopped real quick."

Although the seats didn't contribute to the accident, Green said, he told Bell they may not be as safe in an accident as permanently fastened seats.

Oregon data—approximate change

	Percent
Truck inspections, 1981 versus 1982:	
Vehicle inspections	0
Mechanical violations	−57
Out of service vehicles	−38
Out of service (42 versus 28 percent)	−14
Driver violations	−32
Violations per inspection	−48
Accidents, 1981 versus 1982:	
Total number	−22.5
Injuries	−12.4
Fatalities	−43.6
Miles traveled, 1981 versus 1982:	
Total	+6
Accidents per mile ratio	−24.7

Senator **Danforth**. Mr. Main.

STATEMENT OF BRUCE L. MAIN, NATIONAL DIRECTOR FOR SAFETY, UNITED BUS OWNERS OF AMERICA

Mr. **Main**. Good morning, Senator. We have already submitted an eight page report along with all of the forms [1] that we use in safety. I do have a small document here I would like to read.

We, of United Bus Owners of America, are concerned with illegal, unqualified, unsafe operations of coaches, school buses and church buses. Our members go to great expense to get ICC and State authority to train drivers, maintain good equipment, yet the company across town which has no authority, poor and unsafe equipment, unqualified drivers: underbids our members, taking away their revenue.

Our complaints to the enforcing agencies fall on deaf ears. At times we have been told that nothing can be done because these illegal carriers have no authority so there is nothing to take away from them. Then where is it beneficial for our people to have any authority? We have heard of the $1,000 fine for illegal movements on the first day and $500 every day thereafter, but we have not as yet seen any enforcement of this in our industry.

Our second view here is the church buses—the church buses that are normally 75-percent mechanically neglected, being driven by unqualified drivers. Also, these church buses are very often being chartered by other groups other than the church groups to bypass the ICC requirements.

Our total view here is purely for safety and the main thing is we are carrying the most valuable cargo there is, the people. What we do need is we need more road checks. We need a periodic inspection, whether it is once or twice a year, of this equipment. We also need a national drivers registry that we can check drivers for. We can make all of the laws we want, sir, but if they are not enforced and we do not find enforcement of the laws either by the Interstate Commerce Commission or the Federal DOT.

We, as an agency, have made complaints on illegal carriers, giving dates, unit numbers, drivers' names, locations of the illegal trips being made, and still there is no enforcement. We have given them to the ICC and the DOT and have not had a response of enforcement.

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[1] The forms are in the committee files.

Our people are very upset. We have illegals buying buses that should not be on the road. This was shown at the Knoxville World's Fair, where some of the equipment, and I had one car every month placed in there, working with the PUC and the Federal DOT and some of the equipment that rolled in there, sir, was an absolute disgrace. I am not overly found of my neighbor's dog, but I would not let him ride in some of those buses. That is how unsafe they were.

Senator DANFORTH. These are largely school buses?

Mr. MAIN. School-type buses but painted various colors. There were some of these charter buses that had no authority at all. Where they dug them up we do not know. But they should not have been there, sir.

What we need is enforcement of the rules and regulations. We can set all the rules and regulations we want, put in log books, everything you want you can put it down, but if there is no enforcement on it, everybody just looks the other way.

You have got the 55-mile-an-hour speed limit and I have never seen a truck or a bus driving 55, including myself. The fact remains it is used as a weapon. If a little town needs a little bit of revenue, all of the sudden they put their radar setup at 57 and everybody gets a ticket. Now our drivers have got a record now. It is going to kick back.

What you need is enforcement of the regulations you have now so that everybody knows that when they make a regulation they are going to enforce it and not just look at it and laugh at it. That is about it.

Senator DANFORTH. Well, you have done very well. Do you think that the general view of bus drivers and truck drivers is that no matter what the law is or no matter what the regulations are they can just violate them with impunity?

Mr. MAIN. No, I did not say that, sir.

Senator DANFORTH. What would you say?

Mr. MAIN. What I would say is the majority of drivers are good drivers, legal drivers, but you do have the percentage that are illegal, operating with no authority. When you ask them for log books they think you are referring to them hauling logs. I have had that happen.

I am a former DOT man and I have stopped many a unit and asked them for their log book and they said, "man, I am carrying watermelon, I ain't carrying logs." This is the type of driver—thank gosh we do not have too many of them—but we do have them. But it is the illegal operation that we are after.

You get these church groups. They put the name of the church on the side of the bus and when that is not being used for the church itself then whoever is in charge of the church says well, you make a donation in the amount of so-and-so to the church and we will haul you anywhere you want to go. This is going on.

The drivers are unqualified. He just looks around and well, Brother Jones, you drive the bus. I have not got a license; you drive the bus. This is a church bus. This is going on. We have talked to these drivers. They are not happy with it either.

Senator DANFORTH. What do we do about enforcement? Is it basically a question of money, the number of people who are inspecting or stopping buses, looking at them? Is it basically a dollars question, do you think?

Mr. MAIN. I think basically what it is is that both Departments—ICC and DOT—are understaffed. They do not have enough people to go through with it. They are now occasionally working with the State agencies, which we think is very good, but what we do need is the spot checks on the road, but more so.

Now the Interstate Commerce Commission made a statement this morning that they had a road check in Nevada. Now that is a disgrace. They should have been able to say they have had numerous road checks. This is where you get the drivers. They usually have a road check in an area where there is one artery through and you cannot bypass them with the CB's and the word of mouth.

These fellows are bypassing the road checks if they are held in other places. But when they have those road checks they are invaluable. You get the driver, you get the equipment. He does not have time to alter or change the equipment. He just walks right into it. That is where you find out what is on the road, sir.

The man in the shop, yes, they have a DOT requirement, pretrip inspection. A majority of drivers are driving the same vehicle so they just hop right in the seat and say well, I checked it last night. He fills out the paperwork, signs it, and off he goes. We do need inspection.

As far as granting authority, the companies should be inspected by either ICC, a State agency, or DOT before these authorities are granted.

Senator DANFORTH. And periodically thereafter?

Mr. MAIN. Yes, sir, they should be. I know when I was with the DOT as an investigator our requirement was every third year you hit a carrier and more than likely you catch them on the road inbetween, but it does not seem to be working like that at the present time, and this is due to the fact of manpower funding.

Those people need the people to do the work. It is all right to say you have rules and regulations, but if you do not have anybody enforcing them, what good are they? This is why your illegals are laughing at us. We have them tell us point-blank, "so I take a chance. I will pay a fine, maybe $1,000, but look how many trips I have made." It is not fair.

Senator DANFORTH. OK. Thank you very much, Mr. Main.

Mr. MAIN. You are welcome.

[The statement follows:]

STATEMENT OF UNITED BUS OWNERS OF AMERICA

Mr. Chairman, my name is Bruce L. Main, National Director for Safety, for the United Bus Owner of America (UBOA.) We are a non-profit trade association serving the universe of privately funded, highway motor carriers of passengers. Our constituency ranges, on the one hand, from the Trailways System to a myriad of small operations, some operating as few as one bus. The total enrollment is in excess of 1500 bus owners.

Mr. Chairman, UBOA wishes this morning, to concentrate on Title III of S. 1108, captioned "Motor Carrier Safety Act of 1983." We direct ourselves to those provisions, rather than to those of a more generic nature, appearing in the Enacting Clause, under the title, "Highway Safety Act of 1983." We support explicitly the provisions of Title III requiring annual inspections, and directing that there be, in advance of any Interstate Commerce Commission (ICC) award, an inspection of the applicant's vehicles: that process to be a major component of the procedures whereby it is established that an applicant is, or is not, possessed of fitness, essential to operation of motor coaches on the Nation's highways. In that regard, let it be emphasized that UBOA demands safety fitness as a pre-requisite to membership.

Our general membership has approved a checklist which is followed by our safety inspectors in mounting on-site inspections of a member's equipment. We have five safety inspectors, each one an accredited professional. Each inspector has custody of a new or near-new station wagon, which is fully outfitted with safety equipment and support material.

As you will note from the check list, we follow closely the style and content of State motor vehicle inspections. In addition, we establish with the owner, full familiarity with safety requirements contained in the Federal Motor Carrier Safety Regulations (Title 49 CFR, Chapter 1, Subchapter B; Parts 390–399.) After a UBOA inspection, it is completely inappropriate for a highway carrier to plead ignorance of any of the fitness requirements.

Current ICC procedures require merely that new applicnts for operating authority assert their access to, familiarity with, and intention to be in compliance with, the Department of Transportation's safety regulations. Our Association has been directed by its membership to make enrollment accessible only to carriers who are operating with proper authority or who will put themselves in the process of securing such authority. Any carrier who, following a UBOA inspection, files an application for ICC operating authority, is fully able, with a clear conscience, to attest to being in safety compliance. Where compliance is in doubt, follow-up verification procedures are put in place.

UBOA is fanatical over requirements for legal operations. We are at war with the so-called "gypsies," who ply the nation's highways without benefit of operating authority, and often without insurance. Ironically, our own safety personnel are nearly as nomadic as were the native gypsies who wandered across Europe during the 14th and 15th Centuries. Take my own situation. Although I maintain two fixed office locations, I am almost never available at either one, and must follow through from a distance on requests for special inspections; for information or some other type of member service.

Trailways monitors performance patterns by its drivers, generally in unmarked cars. If a non-Trailways bus is seen to carry a UBOA logo, Trailways monitors will also observe that operator's driving habits. Reciprocally, UBOA's conspicuously marked safety patrols monitor Trailways drivers, and all other bus drivers; whether or not the buses in question carry UBOA insurance; or are, indeed, members of UBOA. Our inspectors are instructed not to hesitate in pulling over the driver of a bus who is observed in hazardous maneuvers, or whose bus is seen to display evidences of safety non-conformance.

Until now, nothing has been said about our insurance program. UBOA does provide comprehensive insurance coverage. We are one step removed from self-insurance in the trade sense, but our members are enthusiastic in their support of our enforcement procedures, realizing, as they do, that our systematic activities hold out the certainty of either direct or indirect savings in insurance costs.

Furthermore, although the obligatory criteria of the Bus Regulatory Reform Act of 1982 are not yet in place, UBOA's official position is that we encourage all members to carry a minimum of $5,000,000 in liability protection. it is significant that, at the membership meetings where our insurance minima were ratified, member support was nearly unanimous. Should S. 1108 be enacted, as UBOA hopes it will be, the next step will be for us to accelerate our efforts, rather than to lower our guard.

Mr. Chairman, UBOA is pleased to note that Section 312 of S. 1108 sets out to ensure that States will apply Federally prescribed minimum standards to their intrastate safety criteria. I, personally, as a resident of New York State have been, frequently, in the presence of John Murphy, New York's Chief Motor Vehicle Inspector. We do not fault the Empire State for having the nation's most rigid inspection standards. We are, however, rather surprised to see the lack of vigor in the actions by other States to adopt similarly high levels of protection. We do make it a point to seek upgrading of State criteria. Our regional safety inspectors and I keep in close touch with State safety administrators, and we encourage State bus associations to maintain continuing liaison, thereby not only strengthening and broadening compliance requirements, but also, ensuring that we are kept advised of any changes States may elect to introduce.

Safety is far from being the only province in which multiplicity of State law creates barriers to the interstate movement of passengers. UBOA is light-years from its goal of having the intercity bus enjoy the same freedom of movement which is accorded the privately owned automobile. It is a travesty that international motor coach travel in Europe is simpler than interstate travel on this continent.

UBOA will begin, shortly, its fourteenth year of service to the privately owned bus operator. From the very start, universal safety requirements have been at the top of our agenda. We argued at both DOT and at ICC, that neither agency was performing adequately in safety enforcement. We tried to secure from both agencies, affirmations that broadened safety jurisdiction would be sought. We were delighted when S. 1390 was introduced on June 21, 1979.

Prior to enactment of the Surface Transportation Assistance Act of 1982 (Public Law 97-424), there was incorporated into what was then H.R. 6211, the language of what had been S. 1390. We applaud you, Mr. Chairman, for having been the driving force, the catalyst, in causing that transposition to take place.

Current information tells us that the Secretary of Transportation has not yet made a decision on implementation of Section 18 of the Bus Regulatory Reform Act of 1982 (Public Law 97-261.) Without regard to any action by the Secretary, the minimum level of financial responsibility for bus companies, after November 1, 1984, will be $5,000,000. As has already been indicated, UBOA's membership has mandated that $5,000,000 be the absolute minimum any carrier should consider.

Furthermore, our membership has decreed that entitlement to membership, and to our insurance program, is to be restricted to carriers who can demonstrate that their operations are legitimate; that they have necessary ICC or State authority in place or under application; or, alternatively, that transportation is being performed under valid lease arrangements with duly certified carriers.

UBOA cooperated, during the late Seventies, when the Indiana Highway Patrol mounted a road block for buses on the Indiana Turnpike. We have repeatedly offered our cooperation for similar operations to be undertaken by ICC. On July 19, 1979, we wrote to then-Transportation Secretary Brock Adams:

"UBOA supports, vigorously, whatever procedures are necessary to ensure the safety of highway travelers. The most glaring inadequacy, concerning safety, has been failure by your Department to encompass the unregulated segment of public transportation: the church fleets; the private carriers engaging in illicit charter operations; and other 'gypsies' ".

We have said that UBOA was enthusiastic about the introduction of S. 1390. Similarly, we were loud in our lamentations when the bill failed of passage in the House. In our newsletter, The Docket (January, 1981) we reported:

"Although Committee counsel insisted that there were eager efforts to come out with an acceptable bill, there seemed to be no real wish for action by the Public Works and Transportation Committee. Committee disinterest is hard to understand. This is true because the bill could have been a monument to Harold T. ("Bizz") Johnson, Committee Chairman, who was defeated, and Ranking Republican William H. Harsha, who left Congress voluntarily at the end of the session.

There was plenty of time. Following early-1980 Senate passage, the House had the bill for no fewer than ten months. UBOA puts part of the blame on the bus industry. Two days before Thanksgiving, counsel (for the Subcommittee on Surface Transportation) called together bus industry people, and asked if we were eager to have the bill become law; or whether we would rather let it go over and become part of a 1981 bus deregulation package. UBOA, alone, said pass it now."

In regard to action or inaction by administrative agencies, we note with approval your remarks, Mr. Chairman, where you took to task, in very diplomatic language, the ICC for accepting from truck and bus applicants, a mere affirmation of faith as evidence that conversion has been accomplished; that redemption is at hand. It is imperative that Congress require compliance with established safety standards, that compliance by carriers must be demonstrated before approval even of minimal applications for operating authority.

UBOA has among its members, a number of church groups, congregations who provide to their parishioners and to others of similar persuasion, transportation for which they have been granted full operating authority, and in regard to which our insurance policies have been issued.

We are excited about the provisions of S. 1108, wherein it is declared that the pending statute would apply to any eligible vehicle operating in or affecting interstate commerce. In view of the reality that churches and other non-profit groups have applied for and secured valid operating authority, we hope legislative history accompanying S. 1108 will demonstrate that any compensated transportation affects commerce; that, indeed, interstate commerce is affected whenever transportation is accorded where, were it not for the carrier actually employed, the passengers would have moved by a certicated carrier.

Finally, UBOA hopes that whatever other language modifications might occur, there will be no reduction in the specification of S. 1108, that vehicular inspections shall be performed annually.

Mr. Chairman, I hope it has been made apparent to you and your colleagues that UBOA is indeed a safety activist. I hope we have conveyed to you our determination to continue crusading until such time as meaningful bus safety inspections and criteria will have become effective. Please be confident that, whatever instrumentality may be designated to administer the statute which may issue from S. 1108, UBOA will cooperate enthusiastically. Toward those ends, UBOA pledges to expand, invigorate and pursue even more effective safety compliance among companies which enlist themselves as members of the United Bus Owners of America.

Mr. Chairman, we declare our appreciation for the opportunity of being able to appear before your committee today. We applaud you, the full Committee, the entire Senate for undertaking very wholesome and essential improvements in the statue governing motor carrier safety.

Senator **Danforth**. Mr. Johnston.

STATEMENT OF JAMES JOHNSTON, PRESIDENT, OWNER-OPERATORS INDEPENDENT DRIVERS ASSOCIATION

Mr. **Johnston**. Mr. Chairman, thank you for the opportunity of allowing us to testify and present our comments here today.

I would like to begin by making it plain that we consider it totally unjust to find truckers continually singled out and targeted for special safety inspection and enforcement activities. We are extremely proud of the professionalism and safety-conscious attitude exhibited by the vast majority of professional truck drivers.

In saying this I will also concede that there is always room for improvement. We will support enthusiastically all rational initiatives directed at promoting safety on the highways. First and foremost we believe very strongly that the relationship between economic stability of the trucking industry and truck safety cannot be ignored.

We are convinced that the headlong stampede toward continuted deregulation will carry with it a heavy price. Predatory ratecutting and unrestrained competition has already created a situation where most owner-operators and many carriers are operating at rates substantially below cost of operation.

Quite simply, you cannot have both cheap rates and safe, dependable transportation. You cannot dump enough dollars into enforcement to create a safe environment when an individual or company finds himself faced with a situation of properly maintaining his equipment or feeding and housing his family. Unfortunately, that hard reality exists today for a great many owner-operator truckers.

The assumption that when an individual cannot make a profit he will simply go out of business to be replaced by someone more efficient who can hold water in this situation because to most owner-operators bankruptcy means complete financial ruin. Many of them have their houses and all the property they own up against the note on that truck, so he is going to hold on as long as he can move that truck up and down the road.

Under tital deregulation the situation will be further compounded because the regulated base of opertion, the carrier, will quite likely no longer exist. Transportation by independent truckers which will increase substantially, will be conducted through unregulated, highly mobile and quite possibly unscrupulous brokers.

Enforcement activities will be frustrated because of the necessity of being directed at each truck individually and to be perfectly honest with you, if my truck is not in compliance you are not likely to find the opportunity to inspect it.

Hours of service regulations, we believe that log books and hours of service regulations rather than contributing to safety result in the opposite effect. There is simply no way to regulate or legislate sleep or rest periods. In many cases, particularly concerning the employed driver as opposed to the independent contractor, the driver is required to report to work on 2 hours' notice after 8 hours off-duty on a continuous basis until he has accumulated 70 hours in 8 days.

I have explained this in more detail in my written testimony. There is no way to control what he does during his off duty periods. Studies show the majority of accidents happen in the first few hours of driving. Extending the required off-duty periods would not be a solution to this problem and I am not sure what the solution would be.

I do think it would be very helpful if carrier would, whenever possible, provide advance schedules of at least 2 days and possibly a week to allow the driver the opportunity to schedule his personal activities to his best advantage.

In most cases, given the flexibility of self-determination, the independent contractor owner-operator would be able to operate more safely and efficiently by scheduling his operations according to the demands of his body. The good Lord did an excellent job when he created the human body and its controls and I do not think the Department of Transportation can outdo Him.

STIFFER PENALTIES

It is outrageous to me to hear the promotion of stiffer penalties as a means of improving safety for the driver who knows a bad tire or poorly maintained brakes can kill him. It is hard for me to imagine he would be more concerned about a fine. What we need are safety programs designed to promote safety rather than generate revenue. .

Truckers perceive—and in many cases justifiably so—safety inspections to be a severe form of harrassment, for example, fines for cracked clearance lights, burned out clearance lights, or the like, which the operator very likely intended to fix anyway at the first opportunity and certainly would when it was called to his attention.

We favor realistic speed limits designed appropriately for area conditions rather than the arbitrary 55-mile-per-hour speed limits nationwide. Just as 55 may be too fast in some locations, under certain conditions we feel hazardous conditions exist where speed limits are set too low for conditions. Fatigue and monotony can be jsut as dangerous as traffic congestion. We feel the State and local jurisdictoins are best qualified to determine safe speeds in their respective areas.

In conclusion, we urge this committee to develop legislation which would focus the major portion of efforts and funding toward research to develop safer equipment and conditions and toward educational programs designed to promote safety and educate the general public as well as the commercial driver on how best to use and share the excellent and expensive system of roads and highways we have developed in this country.

We have two recommendations that are pretty brief. Brake systems, computer braking systems, are obviously not the solution. Present brake systems are adequate for safe operation if they are properly maintained and adusted. The problem is keeping them properly adjusted. Perhaps the solution is a mandatory efficient self-adjusting brake system.

Front tire blowouts are extremely hazardous both for the trucker and other motorists sharing the highways. In the event of a front tire blowout in a truck it is almost impossible to maintain control. There are presently several systems on the market capable of solving this problem. We would suggest further research and possible mandatory installation of such systems on new equipment.

Enforcement activities are, of course, necessary and should be pursued. However, for those who are uninformed or are unsafe because of attitude, enforcement often comes too late or without meaning, while those who are safety conscious professionals find themselves harrassed by tactics which quite often amount to infringement upon their constitutional rights.

Senator DANFORTH. Well, it sounds as though your position is that you are for research and education and other than that basically you want to be down in the "no" column.

Mr. JOHNSTON. Well, pretty much. We think that safety is certainly a problem on the highways, and nobody has more of an interest in that than the independent trucker who spends the major portion of his life out there. We feel however, that funds are misdirected if focused toward just on enforcement, particularly in a situation where many companies just simply do not have the cash to properly maintain their equipment.

We think that there certainly are areas that could be improved upon in vehicle design, particularly in brakes and steering control in the event of blowouts, and that is a very hazardous situation.

Senator DANFORTH. Do you have any estimate—and maybe you do not have any basis for making an estimate—but do you have any estimate for how much time in the typical week an owner operator would spend on the road?

Mr. JOHNSTON. Yes, and I also have an estimate of how much extra time the 55-mile-an-hour speed limits cost him, which is about 365 hours per year. But the average independent——

Senator DANFORTH. Nobody drives 55.

Mr. JOHNSTON. No, but we certainly pay the toll for not doing so. We estimate the average owner operator travels approximately 100,000 miles per year. At 55 miles per hour, that would be 365 hours less than at 65—more, excuse me.

Senator DANFORTH. Well, they are not driving 55 unless it is up a very steep grade.

Mr. JOHNSTON. Well, you know, there is a great deal of incentive and pressure, for that matter, on truckers to drive a little faster, but I do not think that——

Senator DANFORTH. They drive faster than I do, I can tell you that.

Mr. JOHNSTON. Well, I do not think that. You know, I have heard a lot of comments here about this terrible truck accident, but I also heard the comment about the guy that had the one fatality was as a result of somebody making a U-turn in front of him, and I think in that area it is very important that the general pubic be educated as to how to share the highways with trucks as well as truckers, because we have seen a lot of instances where the general public is at fault in a lot of these accidents.

Senator DANFORTH. My method is get out of the way.

Mr. JOHNSTON. That is one method, if you happen to be in the way.

Senator DANFORTH. You say it is about 100,000 miles a year you think would be about average?

Mr. JOHNSTON. Approximately that would be the average for the individual truck driver.

Senator DANFORTH. So what would that work out to? What would you say the typical day would be—how many hours?

Mr. JOHNSTON. Well, it depends upon what type of operation he is involved in. For the trucker leaving the Midwest, Missouri, and driving to the east coast with a load of meat, the regulations require 10 hours and then stop for 8 hours and sleep. If you just happen to get 8 hours sleep before he started working, driving, it would not be practical to assume that after 10 hours driving he is going to lay down and sleep.

Most operators use some degree of flexibility. Most operators are very, very conscious of their capabilities and they have an entirely different attitude and they are psyched out to entirely different circumstances when they are driving that truck than the individual who gets in a car is. So it is no more difficult for the owner-operator to drive 12 or 14 hours than it is for a Senator or a Congressman to work 16 or 18 hours a day and pass the laws that we all must live by.

Senator DANFORTH. So you think that it might be 14 or 16 hours. Do you think in a day that would be typical?

Mr. JOHNSTON. No. I think that would be extreme. I would say possibly 12 hours and possibly, under certain circumstances, a little longer than that. Ordinarily, a driver will operate 3 to 4 hours and he will stop and eat lunch and if he happens to be a little bit sleepy he might just take a nap right there. And then he might start out and drive another 5 to 6 hours and possibly take another nap.

The controls of the body are much, much better than Federal regulations for ensuring adequate rest.

Senator DANFORTH. What is your view of the construction of truck cabs? Are trucks safely constructed or are they unsound?

Mr. JOHNSTON. I think it certainly leaves a lot to be desired. I think with the passage of the recent legislation exempting the tractor from the overall length requirements, I think there is certainly a great opportunity there to improve both the aerodynamic and the safety design of truck cabs.

In the past, truck cabs have been designed for economical use within restricted lengths and quite often amounting to no more than a postage stamp on the front of that trailer. I think we have a good opportunity here to make some real improvements in safety.

Senator DANFORTH. Thank you very much, sir.

Mr. JOHNSTON. Thank you, Senator.

[The statement follows:]

STATEMENT OF JAMES JOHNSTON

I would like to begin by making it plain that we consider it totally unjust to find truckers continually singled out and targeted for special safety inspection, and enforcement activities.

It is obvious, to us, that if some of the treatment dished out so liberally to truckers in the name of safety were bestowed upon the general public, a cry of unconstitutional treatment would ring out so loud it would shake the Halls of Congress, as well as the Supreme Court.

There are those within our own industry who help to perpetuate this type of injustice (while setting safely in their offices immune from the results of their encouragement) because they feel the public and the regulators will like them and the industry better if they articulate their deep concern for safety.

Many trucking companys go to great lengths to distribute to their drivers and leased operators volumes of safety rules and bulletins (for the benefits of the public, the regulators and their insurance underwriters); then in a telephone conversation, or off the record conversation, threaten or berate a driver for refusing to make an overnight delivery on a thousand mile trip.

We are extremely proud of the professionalism and safety conscious attitude exhibited by the vast majority of professional truck drivers.

They are not only very particular in conducting their own affairs safely, but quite often make the extra effort to encourage others to do the same.

In the event of an accident, on a lonely road in the middle of the night (or any other time or road) it is not the police or an ambulance who arrives first, it is usually a trucker who, in most cases is quite willing to become involved and help to protect the lives of those involved as well as other motorists.

In saying this, I will also concede that there is always room for improvement. We will support enthusiastically all rational initiates directed at promoting safety on the highways. Because the trucker, for all practical purposes, spends his life on the road, no one has a greater stake in helping to make it safe than he does.

First, and foremost, we believe very strongly that the relationship between economic stability of the trucking industry and truck safety cannot be ignored. We are convinced that the headlong stampede toward continued deregulation will carry with it a heavy price. Predatory rate cutting and unrestrained competition has already created a situation where more owner operated and many carriers are operating at rates substantially below cost of operation.

Quite simply, you cannot both cheap rates and safe dependable transportation. You cannot dump enough dollars into enforcement to create a safe environment when an individual or company finds himself faced with a situation of properly maintaining his equipment or feeding and housing his family. Unfortunately, that hard reality exists today for a great many owner operator truckers.

The assumption that when an individual cannot make a profit, he will simply go out of business to be replaced by someone more efficient who can, does not hold water in this situation because going out of business for most owner operators means complete financial ruin so he is going to hold on as long as he can move that truck up and down the road.

Under total deregulation, the situation will be further compounded because the regulated base of operation (the carrier) will quite likely no longer exist. Transportation by independent truckers (which will increase substantially) will be conducted through unregulated highly mobile and quite possibly unscrupulous brokers. Enforcement activities will be frustrated because of the necessity of being directed at each truck individually and to be quite honest with you, if my truck is not in compliance you are not likely to find an opportunity to inspect it.

The scenario of a takeover by brokers, we feel, is inevitable because brokers can operate much cheaper with very low overhead and a great deal more flexibility than the carrier who provides certain services, both to the shipper and the independent contractor.

This scenario, although, seemingly more efficient and less costly and therefore a benefit to the consumer, would in reality be no benefit at all. Past experience in dealing with "Hot Freight Brokers" provides me with ample experience from which to draw my conclusions.

The broker first gets his foot in the door for the freight, possibly through the use of pay offs and bribes to the employed personnel of the shipper. Then, out of necessity, the trucker must deal with him to get the loads and the legitimate carrier or broker is then frozen out.

The consumer, nor the shipper benefit from this arrangement, and neither does the trucker. Because even though the broker pays the trucker just as little as he can get by with, depending on the availability of trucks. This in no way reflects the cost of transportation because depending on how tight a hold he develops on the products being shipped and how much he pays off the shipping clerk he can still charge the shipper whatever the market will bear. I have personally seen examples of more than double what he was paying the trucker.

Hours of Service Regulations: We believe that log books and hours of service regulations rather than contributing to safety result in the opposite effect. There is simply no way to regulate or legislate sleep or rest periods. In many cases, particularly concerning the employed driver, as opposed to the independent contractor, the driver is required to report to work on two hours notice after eight hours off duty on a continuous basis until he has accumulated 70 hours in eight days. There is no way to control what he does during his off duty periods. Studies show the majority of accidents happen in the first few hours of driving.

As an example, I would like to site the situation faced by an acquaintance of mine who works for a major common carrier, who I will refer to as Joe.

Joe's usual run is between Joplin, Missouri, and Dallas, Texas. Joe lives approximatley 60 miles from the company terminal. On day one, Joe is called at 8:00 a.m. for his two hour notice. He must report for work at 10:00 a.m. at the terminal which, of course, is no problem. The drive to Dallas takes approximately 9 hours, it is now 7:00 p.m., at which point the company places him off duty for 8 hours. Because Joe got up when he was called at 8:00 a.m., and it is now only 7:00 p.m. are we to realistically to expect that Joe is going to immediately go to bed and sleep eight hours. Of course not, he is going to get together with some of the other drivers and go out to dinner then he is going to set around and shoot the bull for awhile and possibly have a few drinks (maybe more, he is over 400 miles from home with nothing to do). Let's say Joe calls it quits early and goes to his room at 10:30 p.m. and get to sleep by 11:00 p.m., four of his eight hours are already shot. The dispatcher calls him at 3:00 a.m. which means he must report for work at 5:00 a.m. ready to go. Note: He only had four hours sleep.

Nine hours back to his home terminal, where he arrives at 3:00 p.m. A one hour drive home, dinner with the wife, and if she doesn't have any chores he will probably be ready to go to bed early, this time, about 5:30 or 6:00. At 11:00 p.m. the dispatcher calls, he must report to work by 1:00 a.m. A quick bit to eat, a one hour drive to work and off he goes again.

It would seem to me that it would have been much safer and easier on Joe to let him make the trip to Dallas, hook up to another trailer and make his own judgment as to when to stop and sleep on the way back.

Extending the required off duty period would not be a solution to this problem, and I am not sure what the solution would be. I do think it would be very helpful if carriers would, wherever possible, provide advance schedules of at least two days and possibly a week to allow the driver the opportunity to schedule his personal activities to the best advantage.

In most cases, given the flexibility of self-determination, the independent contractor owner-operator would be able to operate more safely and efficiently by scheduling his operations according to the demands of his body. The Good Lord did an excellent job when He created the human body and its controls, and I don't think D.O.T. is capable of out doing Him.

Stiffer penalities: It is outragious, to me, to hear the promotion of stiffer penalties as a means of improving safety for the driver who knows a bad tire or poorly maintained brakes can kill him. Its hard for me to imagine he would be more concerned about a fine.

What we need are safety programs designed to promote safety rather than generate revenue. Truckers perceive (and in many cases justifiably so) safety inspections to be a severe form of harrassment. For example fines for a cracked clearance light lens or one of the five clearance lights burned out which he likely intended to fix at the first opportunity any way and certainly would when it was brought to his attention.

We favor realistic speed limits designed appropriately for area conditions, rather than the arbitrary 55 mile per hour speed limits nationwide. Just as 55 may be too fast in some locations, under certain conditions, we feel hazardous conditions exist where speed limits are set too low for conditions, fatigue, and monotony can be just as dangerous as traffic conjestion. We feel the state and local jurisdictions are best qualified to determine safe speeds in their respective areas.

In conclusion, we urge this Committee to develop legislation which would focus the major proportion of efforts and funding toward research to develop safer equipment and conditions and toward educational programs designed to promote safety and educate the general public, as well as the commerical driver on how best to use and share the excellent (and expensive) system of roads and highways we have developed in this country.

For trucks, we would suggest two primary areas where research is needed:

(1) Brake Systems. Computer braking systems are obviously not the solution. Present brake systems are adequate for safe operation if they are properly maintained and adjusted. The problem is in keeping them properly adjusted. Perhaps the solution is a mandatory efficient self-adjusting brake system.

(2) Front Tire Blow Outs are extremely hazardous. Both for the trucker and other motorists sharing the highways. In the event of a front tire blow out, in a truck, it is almost impossible to maintain control. There are presently several systems on the market capable of solving this problem. We would suggest further research and possibly mandatory installation of such systems on new equipment.

Enforcement activities are, of course, necessary and should be persued. However, for those who are uniformed or are unsafe because of attitude, enforcement often comes too late or without meaning. While those who are safety conscious professionals find themselves harrassed by tactics which quite often amount to an infringement upon their Constitutional Rights.

Senator DANFORTH. Mr. Henderson.

STATEMENT OF RICHARD D. HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL OF AMERICA, INC., ACCOMPANIED BY JOSEPH NORMANDY, EXECUTIVE ASSISTANT; AND JOHN DeVIERNO, COUNSEL

Mr. HENDERSON. Thank you. Mr. Chairman. On my right is John DeVierno, our special counsel, and my assistant on my left, Joe Normandy. I will just try to briefly summarize our statement, which you have for the record.

Listening to all of the witnesses this morning I think rather than get caught up in percentages of how much the driver contributes and how much the truck contributes I think we feel that both are factors. And I think when you are talking about the driver, we are talking about the national driver register, which this committee has already done something about, and if we need more money to make it more effective, then we certainly support that.

I think that we have got to define the driver. Before we talk about penalties we have to talk about where he is and what he is in violation of, and I think we are talking about training. Certain private carriers, the corporate members of the Private Truck Council, have extensive in-house training programs and they work and they are effective. And I do not think you can talk about safety without considering those two factors.

Then let us look at the truck and the mechanical defect side of it, and certainly that is a big contributor, whether it is this percent or that is not important, and I would like to emphasize that we would really support both types of inspections. I think that the roadside inspection which was the heart of the four-State pilot program that the Bureau of Motor Carrier Safety Director Ken Pierson alluded to must have been reasonably effective to have brought about the dramatic results that it did.

I think the Bureau's new grant-in-aid program for the States, if it can be properly funded so that that kind of program can be effected in all of the States, I think would go most immediately and directly and quickly to eliminating the unsafe truck.

Then I would suggest, in addition to that, at least this committee might want to explore it, would be the quarterly inspection program which is a feature of what is called the uniform vehicle safety alliance. I believe our witness from Yellow Freight alluded to that this morning or what is known as the western compact. There are about seven western States that are participating in this. So I think perhaps the solution is a combination and not one or the other, because I think the goal is to dramatically reduce accidents and that is a goal we all share.

I think we ought to look to the programs that have been in place and at least have achieved some of those results. But as the committee proceeds to mark up a final bill and whatever the solutions are that you finally arrive at in terms of revised authority or new authority, I would like to stress with you this morning the need for uniformity, whether we are talking about inspections or whatever the rule may be, that one of the things the industry is suffering from and our members are suffering from in other areas as well as safety is the many different State kind of problems—different State rules.

And I think that when we are talking about truck safety that it should be uniformly applied throughout the States and I cannot stress that too much. We are a national industry. This committee has been through that problem on sizes and weights and on registration and fees and all the rest. And safety is also an area where that could be very harmful to us and actually work against the ultimate goal.

If a State feels that it indeed has a rule or procedure which is better than the Bureau, then we submit that the State petition the Bureau, as any individual would or as any group would, and go through the formal docket hearing process of deciding whether indeed that rule has a national benefit.

Perhaps a State has a program and it is working. Well, all we are saying is go through a tried-and-true procedure before you adopt it and then, when it is adopted, let us make sure it is national and that it is uniform.

Finally, and I am sure this committee would agree with us, that no matter what rule or regulation we are talking about, without a proper cost-benefit mechanism, which may be in place down there but I an not sure that they have the personnel to enfore it, all rules, not just where practical, all regulation, big or small, without a dollar value assessed to them should have that test applied to them and on a strict basis.

We have to ask you for that as some protection against the regulatory and paperwork problems that I think we all fear in any bureaucracy. But if this test is applied properly and there is a reasonable benefit or the benefit outweights the cost, then it is worth looking at.

So, Senator, rather than get into details, I though I would just try to summarize those as our main points to try to help you work out your problems.

Senator DANFORTH. You have been very helpful. Thank you very much.

As far as you are concerned, what is the effect of the multiplicity of State regulations? Can you spell out why that is a problem for you?

Mr. **Henderson**. You are talking in the safety area or just registration?

Senator **Danforth**. Safety basically.

Mr. **Henderson**. Well, an example comes to mind in the hazardous material area, I think, which might demonstrate the point. New York City, I believe, would establish a rule more stringent than the DOT which would in effect require an operator to purchase and "spec" a truck just to operate within that jurisdiction.

Now admittedly that is perhaps an extreme case, but on the other hand, in the area of hazardous materials it is not too farfetched to believe that that could happen not only in New York City but in more and more localities as we are facing counties and cities and States which are looking at this problem on their own.

But that is the ultimate fear, is that the truck would suffice in New Jersey and Pennsylvania and would not in this jurisdiction, and either you would have to stop the truck——

Senator **Danforth**. Very similar to the barrier State problem with the truck size.

Mr. **Henderson**. Right.

Senator **Danforth**. Now your council, this is basically businesses that own their own trucks?

Mr. **Henderson**. That is right, corporate owned. Many of them are Fortune 500 companies all the way to small hardware stores.

Senator **Danforth**. With respect to inspection, whether it is a periodic inspection or whether it is a roadside inspection, you would support that?

Mr. **Henderson**. Yes.

Senator **Danforth**. You do not view that as a tremendous economic burden?

Mr. **Henderson**. Well, I guess I have to go back to the four States and the DOT's pilot program. They did use State personnel. I am not as familiar with the details of that. There was Federal money and State personnel. I think there has to be a combination like that and it seems to me that that worked.

I think the 128 or more inspectors for the Bureau are woefully inadequate, as almost every witness testified to this morning. So I think there has to be additional personnel and perhaps State personnel, as long as the Bureau can establish the guidelines so that you do not have the States going off not only enforcing the rule but enforcing their rule, rather than the Federal rule.

I think maybe that gets back to answering your question earlier, that where you involve State personnel, and probably you have to, greater care has to be taken that there is uniformity of enforcement.

Senator **Danforth**. Would there not have to be civil penalties to put any teeth in any kind of safety regulation?

Mr. **Henderson**. Well, let me just say that we have reservations about civil forfeiture and civil penalties. I do not know that that is the heart of the problem. I guess our position would be if you feel you have to include them, then let us make the penalties reasonable.

I do not think that that has the deterrent that one might hope and wish for. If it did, perhaps we would have had them long ago and had higher penalties. Again, it goes back to what the previous witness and everybody said. You have got to find the guy that is violating the law first.

Senator **Danforth**. You have to find them, but then you have to say if you are a violator, something bad is going to happen to you.

Mr. **Henderson**. I would agree there has to be some deterrent in it, sure. We would caution against unreasonable and high penalties for paperwork type violations as opposed to an egregious equipment violation.

Senator **Danforth**. Safety violations?

Mr. **Henderson**. Right. There has to be a balance there.

Senator **Danforth**. What would be the best type of deterrent, in your view? Would it be loss of license or that the vehicle could not operate any longer?

Mr. **Henderson**. I think if the NDR were in place and you found the applicant had falsified his license, I think you would talk about revocation of license or denial of the opportunity to take the job, sure. The other, I think, is the deterrence from the inspection and enforcement, where the reputation is that that State and hopefully all 50 States, the chances and the odds are that they are going to get me, that they will find me.

I think that will be the deterrent, at least we would hope so.

Senator **Danforth**. Certainly being caught, but then once you are caught something bad is going to happen.

Mr. **Henderson**. OK, I know what you are getting at, so I would say let us find them first—find who they are, get them off the road—and then maybe we can reevaluate whether the penalties in effect achieve what—I do not know in those four States of the BMCS pilot program whether the penalties were actually increased.

I think the fear was and the deterrent was that they simply knew they were goint to be caught. And, as I say, I do not know. It might be worth checking into. We would be glad to help and see whether it was the penalty provision in those four States or the consistent roadside inspections which really did the trick.

Senator **Danforth**. Thank you very much, sir.

Mr. **Henderson**. Thank you.

[The statement follows:]

STATEMENT OF RICHARD D. HENDERSON, EXECUTIVE VICE PRESIDENT OF THE PRIVATE TRUCK COUNCIL OF AMERICA, INC.

Mr. Chairman and members of the committee, my name is Richard D. Henderson. I am Executive Vice President of the Private Truck Council of America, Inc. (PTCA).

The PTCA is the only independent national organization representing non-transportation companies with respect to the operation of trucks by those companies in the course of their own manufacturing, processing, retailing, or other businesses. Private trucking is acknowledged to be the largest segment of the trucking industry, and the PTCA's approximately 1,800 member companies include Fortune 500 companies and numerous smaller concerns.

We are pleased to have the opportunity to present our views on S. 1108, the proposed "Highway Safety Act of 1983," and commend the sponsors of the legislation and this Committee for their continued strong interest in improving highway safety.

The PTCA shares this Committee's strong interest in safety and, at the outset, I want to make clear that we appear before you today as an organization which has voluntarily dedicated significant time and money to promoting safety. For example, every month for the past 10 years the PTCA has distributed a Safety Bulletin to its membership. In addition, 60 percent of our manuals are directed to truck safety issues and improving truck safety. The PTCA has also developed award programs to provide recognition to accident-free trucking operations. Moreover, we are currently committing significant resources to a voluntary program, undertaken together with other private parties and the National Highway Traffic Safety Administration, to increase seat belt usage by truck occupants.

I turn now to our views on Title III of S. 1108, which concerns safety regulation of commercial trucking operations.

GENERAL VIEWS ON TITLE III OF S. 1108

Mr. Chairman, Title III of S. 1108 has been before this Committee in various forms since the 95th Congress. Since that time the PTCA has been generally supportive of this legislation, though with some particular reservations.

However, this year I must say that we are somewhat less convinced of the need for Title III of the legislation. This is not because we have drastically changed our views on the individual sections in the bill, but because the Congress (thanks in large part to the leadership of this Committee) has in recent years already enacted what we consider to have been the most important provisions included in predecessors to Title III of this bill. In particular, the 97th Congress enacted legislation strengthening the National Drivers Register and authorizing a DOT highway safety grant program. In addition, on an important issue not raised in predecessor legislation to Title III of S. 1108, the Congress has passed drunk driving legislation and this Committee is now considering strengthening that legislation in Title II of this bill.

Also, in the years since this legislation was first introduced, increased international competition in the truck and automobile manufacturing business, as well as technological improvements, have resulted in improved quality of vehicles, with salutory effect on safety. Moreover, in contrast to the circumstances which faced the Congress in past years, where statistics showed year to year increases in truck related deaths or accidents, the NTSB has recently reported that from 1981 to 1982 fatalities of truck occupants decreased from 1,206 to 990 and that, from 1980 to 1982, fatalities associated with incidents involving trucks decreased from 4,284 to 3,993.

Collectively, these changed circumstances have altered our perspective title III. As there are few provisions in it directed as specific safety problems, our overall position on the Title has, by necessity, become more dependent now that it had been on our view of the numerous provisions which serve to establish a revised statutory scheme for the safety regulation of commercial motor vehicles. We have further considered whether this proposed revised statutory scheme is a desirable one in the context of the broad considerations which the Congress and the public in general have been increasingly applying to regulatory statutes: will regulations developed thereunder truly achieve the intended societal goals (in this case of safety improvement) or will they simply result in more paperwork and other costs to industry (and ultimately to consumers), with unclear societal benefits.

In brief, our broad concern is that many of Title III's provisions are not as directly related to safety benefits as other safety provisions recently enacted. We believe, for example, that the enhanced enforcement menpower that can result from the recently enacted safety grant program can definitely help keep unsafe vehicles and drivers off the road. We also believe that the National Drivers Register has a clear safety benefit. We are not so convinced, however, that changing the overall regulatory framework for commercial motor vehicle safety regulation necessarily has such a clear beneficial impact.

As an additional general consideration, in the last few years we have become increasingly and often painfully aware of the regulatory and paperwork burdens which result from the imposition of various and differing regulatory requirements by state and local governments on interstate truck operators. In this regard we commend the sponsors of the legislation for including in the bill language which indicates some recognition that differing state and local regulations present a severe problem to the trucking industry. However, as I will discuss shortly, we feel strongly that the bill does not do enough to pormote national uniformity in commercial motor vehicle safety regulation.

In light of these general concerns we wish to offer comments on several specific aspects of the legislation.

UNIFORMITY AND PREEMPTION OF LOCAL AUTHORITY

One of the major regulatory features of the bill is that, by virute of its definitions, it would authorize DOT (i.e., the BMCS) to regulate truck movements that take place solely within a state. While this aspect of the bill has the appearance of tending to promote uniformity, nonetheless Section 312 of the bill appears to preserve broad opportunities for state and local governments to impose additional and differing regulations, so long as such regulations are "not inconsistent" with Federal regulations. We are concerned that "not inconsistent" is a very weak test that will be interpreted as allowing any state or local regulation which can be physically complied with at the same time as Federal regulations. Morevoer, the test may not prevent different localities from taking different approaches to additional regulations, such that a national commercial vehicle operator might find a need to comply with fifty different sets of "complementary" regulations which are "not inconsistent".

We feel that the time has come for the Congress to truly address the trucking preemption issue. We believe that, particularly in conjuction with a legislative proposal such as S. 1108, which would give the BMCS new coextensive authority with state and local governments, state and local governments should be straightforwardly prohibited from independent regulatory action in the areas of the BMCS' authority under the bill (even when the BMCS has not exercised its authority to the fullest). We believe that, if a state or locality believes it has an idea for improving truck safety regulation, that local government should not be entitled to act on that idea under its own authority. It should only have the opportunity to suggest the proposal to the BMCS in a petition for rulemaking. Then the proposal would be evaluated from the national perspective by DOT (and other persons who might comment to the docket). We consider that if the Congress does not feel that DOT's expertise is such that it would be worthwhile and proper to require the truck safety proposals of local governments to be subject to DOT review and approval, we do not see how the Congress can, at the same time, confidently grant DOT authority to directly regulate intrastate movements.

Trucking is an interstate business and trucking equipment is highly mobile. Trucks used in State A one day may be used in commerce between States B and C on the next day. Uniformity of regulation in this industry is highly appropriate and, if fully pursued in this legislation, would provide the country with the efficiency and cost reductions inherent in uniformity while trusting safety decisions to the agency, DOT, with greatest expertise. For these reasons we would not only amend section 312 to make preemptive, but would also amend the findings and purposes provisions of Title III, to emphasize the need for uniformity.

UNIFORMITY IN HAZARDOUS MATERIALS TRANSPORTATION REGULATION

Also on the subject of uniformity, we commend the sponsors of S. 1108 for recognizing, in the findings provisions of Title IV, that there is a particular need for uniformity in the context of hazardous materials transportation regulation. Again, however, our general view is that even greater uniformity is required than would be provided by the bill (or the present law).

As to specific hazarous materials issues, we want to make clear that we think the Committee is moving in the right direction by recognizing the need to specifically address questions concerning hazardous materials routing. With respect to such routing regulations, we think that legislation should walk the difficult line of providing localities with input into routing decisions while maintaining a preemptive stance which prevents localities from exercising a veto over utilization of means of transportation of hazarous materials which are, under Federal rules, safe means of transport. We look forward to working with the Committee on this issue.

UNIFORMITY IN VEHICLE INSPECTION

Also related to the uniformity issue is Section 313, which would provide for annual vehicle inspections. We believe that this annual inspection provision, can be, with modifications, very responsive to a particular and real safety problem—getting improperly maintained equipment off the road.

The PTCA has been working hard to improve the present system for vehicle inspections (or the lack thereof) and, at our last annual meeting, the membership passed a resolution in support of a uniform system of vehicle inpsections and in support of organizations working toward that end.

It appears to us that Section 313 moves in the right direction by establishing a Federal annual inspection requirement. However, the Federal requirement in Section 313, as drafted, is not preemptive, and would not preclude states and localities from developing additional inspection requirements "not inconsistent" with the Federal requirement. As noted earlier, we favor broad preemption of such local authority. However, even if the Congress will not broadly preempt local regulatory authority as we have suggested today, it should at least take completely preemptive action as to the vehicle inspection requirement.

Moreover, we believe that the bill might require inspections more frequently than annually, at least for over-the-road vehicles, which frequently log 100,000 miles or more annually. For over-the-road vehicles it is clear that there is a real chance of deterioration of condition over a year's time. On the other hand, once a year inspections would be adequate for lower mileage, local route vehicles, whose annual mileages are similar to those of passenger cars.

SECTION 19 REPORT

As a final point regarding uniformity, we urge the Committee to expand the scope of the bill to address the veritable crisis in the trucking industry resulting from nonuniformity of state trucking laws. The burden of state regulations on interstate trucking was clearly outlined in the report recently forwarded to the Congress by DOT and the ICC pursuant to section 19 of the Motor Carrier Act of 1980, and we strongly commend the factual exposition in that report to the attention of the Committee.

This Committee properly attempted to take some initial action to reduce the state regulatory problem during congressional consideration of last year's highway bill, but final enactment was not obtained. We urge the Committee to renew its efforts in this area.

CONSIDERATION OF COSTS AND BENEFITS

We note favorably that Section 306 includes a requirement that costs and benefits be considered by DOT in rulemaking proceedings under certain circumstances. However, we suggest that the bill should strengthen the requirement that costs and benefits be considered by DOT in reaching regulatory judgments.

The suggestions we offer would not preclude DOT from adopting even extremely costly regulations to promote safety, but we would like the bill to be completely clear that DOT should always consider those factors.

First, we believe that Section 306 should be revised to make clear that costs and benefits must be considered in the promulgation of any new regulations, not just in the course of any revisions of existing regulations. Second, we would delete the words "where practicable" from Section 306 to make clear that costs and benefits must be considered before final rules are issued. We are aware of no basis for allowing the possibility of rulemaking in the absence of such considerations. Even in emergency circumstances—and we are not aware of any "emergency" rulemakings that have been undertaken by the BMCS in recent years—costs and benefits can always be considered, even if briefly.

On a related point, we believe that Title III should include a provision amending the BMCS's present general authority, 49 U.S.C. § 304, which does not carry with it a statutory requirement that costs and benefits be considered. Thus, as a technical matter, without such amendment of 49 U.S.C. § 304, the BMCS would be statutorily entitled to promulgate rulemakings pursuant to 49 U.S.C. § 304 (rather than under S. 1108) and avert the requirement that costs and benefits be considered. We are confident that the DOT would not intend to structure rulemakings in such a manner but believe, by the same token, that DOT should, therefore, have no objection to such amendment of the present statute.

CIVIL PENALTY AUTHORITY

The PTCA continues to disagree, as it has through the years, with the inclusion in this legislation of provisions which would allow DOT to administratively impose civil penalties for violations of motor carrier safety rules, including paperwork violations. In taking this position we do not suggest that violations should not be punished, but we would prefer a system in which the Judicial Branch, not the Executive Branch, would act as the judge of the Executive Branch's allegations of violations.

In this regard, we note that Section 311 of this bill would authorize DOT to represent itself in court to pursue violations of safety rules. We understand that, historically, there has been a concern that U.S. Attorneys have not considered BMCS violations to be a high priority item and that independent litigation authority for DOT might ensure that these cases are brought to court. Thus, we suggest that the Congress should consider enacting Section 311 of this bill and giving DOT a chance to work under that provision before proceeding to enact authority for administratively imposed civil penalties.

Also on the subject of administratively imposed civil penalties, if such authority is to be retained in the legislation, we suggest a reduction in the maximum penalties allowable, particularly as applied to paperwork violations.

OUT OF SERVICE AUTHORITY IS OVERBOARD

A different penalty provision of the bill, Section 310(d), would provide DOT with authority to suspend a company's entire trucking operations to correct "imminent" hazards to safety caused by alleged safety violations. The provision would go so far as to authorize DOT to suspend operations first and hold a hearing second as to whether in fact a safety violation had occurred.

We are not presently aware of any hearing record or other evidence which even arguably establishes the need for such an extreme sanction and, in the absence of evidence establishing a clear need for the provision, we ask that it be deleted from the bill. Further, we believe that the bill already includes other, more than sufficient sanctions.

As a second choice position we would amend the bill so that DOT could not impose such a sanction on its own say-so, but only after obtaining a court order. As presently drafted, the provision appears contrary to the spirit, if not the letter of due process requirements, by allowing DOT to shut down an entire fleet before holding a hearing.

SAFETY FITNESS CERTIFICATION

We also take this opportunity to support the need for a revision of present procedures for safety certification of carriers seeking new or expanded ICC operating authority, as is called for by Section 314 of the bill. In this regard we suggest that the legislation should make clear what we believe to be the intent of Section 314, that the new procedure to be adopted would supersede all present requirements safety fitness and safety ratings of carriers and that the ICC and DOT should accomplish Section 314 through a public rulemaking process.

We are concerned that the present system was developed with inadequate public comment, with the result that the BMCS is now dedicating its limited resources in part to the development of safety ratings for private carriers which are not seeking any ICC authority. We are further concerned that the BMCS has not developed procedures to limit the dissemination of safety ratings data to its sole proper purpose—advising the ICC of the safety fitness of persons in the process of applying for authority.

Thus, we support the bill's efforts to revise the safety certification process.

SUMMARY AND CONCLUSION

In sum, Mr. Chairman, while we have set forth today only a few specific concerns with the legislation, our broadest concern is that Title III contains relatively few provisions with clear safety benefits. We do believe that an annual inspection requirement, such as proposed by section 313, can be made to be a truly effective safety tool. We also see a need to revise the safety certification process.

However, we believe that most of Title III may not yield safety benefits. This is because most of the title would do neither more nor less than establish a revised regulatory scheme for commercial motor vehicle safety regulation and, whether a regulatory scheme, broadly worded, will produce beneficial results for the public is always very problematical.

Further, we feel it particularly important that the legislation take a stronger preemptive stance, less the legislation inadvertently result in exacerbation of the already serious problems facing interstate truck operators as a result of conflicting state regulations. Therefore, at this time we are unable to offer general support for Title III. On the other hand, if Title III is amended to provide strong preemption, we may be prepared to reconsider our views and offer general support.

We thank you for the opportunity to appear before you today and would be prepared at this time to respond to any questions the Committee may have.

Senator Danforth. That concludes the hearing.

[Whereupon, at 12:30 o'clock p.m., the committee adjourned, to reconvene upon the call of the Chair.]

HIGHWAY SAFETY ACT OF 1983: TRANSPORTATION OF HAZARDOUS MATERIALS

WEDNESDAY, JULY 13, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:32 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth presiding.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Today we will complete the Commerce Committee's hearing on S. 1108, the Highway Safety Act of 1983. This morning we will examine title IV of this bill which addresses the transportation of hazardous materials.

Hazardous materials transportation is an essential function for the operation of numerous industries in this country. It is, however, a function with which many potentially serious risks are associated, despite the fact that the total number of accidents, injuries, and fatalities associated with this transportation is small in comparison to comparable figures for other types of transportation. For example, the 6,540 hazardous materials transportation incidents reported to the Department of Transportation in 1982 resulted in 12 fatalities, while in the same year more than 45,000 lives were lost in general highway accidents.

While hazardous materials transportation is generally safe relative to other types of transportation, a single hazardous materials transportation incident can have severe and far-reaching consequences. Such an incident can in some cases require that thousands of people be evacuated from their homes for a while, sometimes for several days.

S. 1108 is aimed at strengthening the current system of hazardous materials transportation regulations and addresses problems that have been raised in recent years concerning this regulatory system. The bill emphasizes the importance of training for emergency response and compliance with Federal hazardous materials transportation regulations. The bill also encourages increased enforcement by providing grants for State enforcement of the Federal regulations, and also provides grants for improvement of State emergency response capabilities.

I look forward to hearing from our witnesses today as to ways in which we can make safety improvements in the area of hazardous materials transportation regulation.

Senator Hollings has an opening statement for the record which will be included at this point.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Today the Committee is holding a hearing on an issue of continuing importance to the Committee and the transportation sector: the safety of hazardous materials transportation. The Committee continues to seek ways to further strengthen safety in this area, which all would agree can be achieved through greater coordination between the Federal Government and the states and localities and industry in the areas of regulation, enforcement and emergency response.

Over the last several years, numerous concerns have been raised about the strength of the Federal hazardous materials safety program, the creation of which Congress believed was so vital to transportation safety when it passed the Hazardous Materials Transportation Act of 1974. The States and localities have been concerned that while Federal regulations have been in place, Federal enforcement activities have not been consistently adequate, and further that insufficient Federal resources were being provided to the states and localities for enforcement and emergency response, the responsibility for much of which is falling on the states and localities.

In an effort to gain more control over the safety of their citizens by minimizing the risks associated with the transportation of hazardous materials, states and localities began to pass regulations of their own, requiring certain information and imposing certain restrictions on the movement of hazardous materials. Concerns have been raised about the proliferation of such regulations, not only about their conflict with the Federal law and the resulting burden on the transportation sector but also about their potentially detrimental effect on overall safety for all jurisdictions. Thus, we are presented with the valid concerns of the states and localities about the health and safety of their citizens and the likewise valid concerns about the safety problems that could result from proliferating state and local regulations.

The legislation before us today attempts to deal with these concerns by promoting increased coordination between the Federal Government and the states and localities. While continuing the Federal regulatory scheme firmly in place, it provides resources for state enforcement and emergency response programs and encourages an improved training and information-gathering effort in this regard. A strengthened Federal presence and cooperation and a more delineated state and local participation can only improve the overall safety of hazardous materials transportation.

A development which will make an even greater contribution to hazardous materials safety is the coalition of state and local and industry representatives which was formed last year as a result of the conflicts which have arisen between industry and the states and localities over hazardous materials regulation. This coalition has made significant progress in discussing the concerns on both sides and beginning to formulate consensus policy positions on the appropriate roles of the Federal Government and the states and localities in hazardous materials regulations, enforcement, and emergency response. While all would agree that more work is left to be done, I commend, and am most encouraged by, the progress of the coalition. I look forward to working with the coalition and other interested parties, some of whom we will hear from today, as we pursue legislative initiatives to promote hazardous materials safety.

Senator **DANFORTH**. Our first witness is Howard Dugoff, Administrator of the Research and Special Programs Administration of DOT.

STATEMENT OF HOWARD DUGOFF, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY LEON D. SANTMAN, ASSOCIATE ADMINISTRATOR FOR MATERIALS TRANSPORTATION

Mr. **DUGOFF**. Thank you very much, Mr. Chairman. I am very pleased to be here this morning to speak on behalf of the Department of Transportation concerning title IV of S. 1108, the Highway Safety Act of 1983.

I am accompanied by Mr. Leon D. Santman, Associate Administrator for Materials Transportation.

I will limit my formal presentation to a brief summary of the statement I have submitted for the record, and then Mr. Santman and I will be pleased to address any questions you may wish to put to us.

I will begin by stating with emphasis that the Department supports the purposes of title IV entirely. We agree with the underlying analysis of the problems associated with hazardous materials transportation, and with the specific areas identified as warranting more effective Government attention.

We are especially pleased to note the bill's explicit recognition of the need for national uniformity in hazardous materials transportation regulations and for Federal, State, and local government collaboration in regulatory implementation. We have ourselves for some time been working toward these ends.

I will describe some of our previous and ongoing related efforts as I discuss the proposed title. I will comment specifically on each of the three principal subjects of the title, enforcement, training, and information.

Title IV proposes to attack the problem of inadequate enforcement of the hazardous materials regulations through an approach that we in the Department have advocated as well, namely, by increasing the involvement of State agencies and personnel in the enforcement effort.

To encourage the States to assume an appropriate and effective role in hazardous material transportation regulation, the Department in 1981 initiated a State hazardous materials enforcement development program. Under this program we furnish technical and financial support to States that have provided for adoption of the Federal hazardous materials transportation safety regulations. This assistance enables the States to develop enforcement capabilities within existing public safety agencies, most commonly the highway patrol, thereby increasing the resources devoted to safety enforcement at a fraction of the cost that would be required to expand the Federal enforcement staff, and providing an incentive for States' adoption of the Federal regulations leading to a uniform nationwide standard of safety.

We are now working to phase the State hazardous materials enforcement activities into the new grant-in-aid program for motor carrier safety enforcement created by section 402 of the Surface Transportation Assistance Act of 1982. That legislation authorized the Department to make grants to States for the development or implementation of programs for the enforcement of Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety. The act defines commercial vehicles to include all vehicles, whether self-propelled or towed, that are used to transport hazardous materials in commerce. Thus, the important objectives of title IV are addressed by the commercial vehicle safety grant program authorized by the Surface Transportation Assistance Act. We are already moving to assure effective implementation of the new enforcement grant program, and we therefore believe that additional grantmaking authority is not required to achieve the necessary improvement in hazardous material safety standards enforcement.

In the area of hazardous materials training, the Department's primary approach toward meeting the identified needs has been to support the delivery of formal training courses by our Transportation Safety Institute in Oklahoma City, Okla. By supplementing our classroom training there with appropriate home study courses, we have generally been able to satisfy our prime responsibility for training government enforcement personnel.

Despite our best efforts, however, unsatisfied demands for training of those involved in the hazardous material transportation safety continue to grow. We believe that title IV's proposal for a Federal training program for incident prevention and response is an entirely appropriate response to these demands. We would recommend, however, that the proposed section be modified to define more precisely the respective roles of DOT and FEMA, the Federal Emergency Management Agency.

Under the Hazardous Materials Transportation Act, DOT's primary role is one of accident prevention through standard setting and enforcement. Thus, as I have indicated, our major training effort is directed at Federal and State enforcement personnel. FEMA, on the other hand, is chartered to provide a single focal point for all Federal emergency preparedness, mitigation, and response activities. Accordingly, we would suggest that the language in section 120 be amended to place lead responsibility for emergency preparedness and response activities with FEMA while designating DOT specifically as responsible for activities relating to regulatory compliance and enforcement.

We believe that with the suggested amendments which are spelled out in our submitted statement, section 120 could serve as the vehicle for significantly improving coordination of the respective responsibilities of DOT and FEMA, and for generally enhancing the effectiveness of available hazardous materials safety training.

Among the resources required to implement a successful hazardous materials safety program, none is more critical than basic information. In our submitted statement we describe a number of important and successful DOT programs whose purpose is to satisfy key information needs. These include the emergency response hot line within the Coast Guard National Response Center, the preparation and distribution of the widely used and lauded "Emergency Response Guidebook" that DOT publishes and has distributed 700,000 copies of, and the development of community planning guides through sponsorship of a series of emergency response demonstration projects.

Notwithstanding these good efforts, however, the view is held by many knowledgeable concerned parties that the Federal program is inadequate, particularly in respect to the needs of emergency preparedness planners at the community level, for comprehensive information on the nature and frequency of hazardous materials shipments through their jurisdictions. Feelings that the Federal Government has not been sufficiently responsive have prompted many State and local governments to impose severe restrictions on hazardous materials traffic.

Section 122 of proposed section 405 of the Hazardous Materials Transportation Act of 1983 attempts to address the perceived shortcomings by authorizing the Department to promulgate a system of prenotification and routing regulations. In fact, the Department already possesses authority to promulgate such regulations under existing provisions of the Hazardous Materials Transportation Act, but we are rather doubtful that a rulemaking approach is the most promising one for attacking these problems.

Prenotification, a system whereby a State or local government is notified by shippers or carriers in advance of shipments of hazardous materials to be moved through its jurisdiction is represented by its advocates as a method of improving the effectiveness of local enforcement and emergency preparedness activities. It is far from clear to us, however, that any form of local, State, or federally mandated prenotification scheme will result in the necessary improvement. The logistical problems involved in implementing such a system would be immense, and our preliminary analysis indicates that the cost of implementation both to industry and to State and local governments would likely outweigh the potential benefits to emergency response programs.

With respect to routing regulations, we have long held the view that well-reasoned routing restrictions on hazardous materials traffic are a proper element of State and local government highway traffic control activities. To avoid placing unnecessary burdens on commerce, and to be consistent with the Federal regulations, however, such restrictions must be adopted through a process that considers the impacts on other jurisdictions and permits those jurisdictions to participate in the process. The requirement must have the effect of enhancing not only the safety of the citizens of the enacting jurisdiction, but overall public safety as well. So long as State and local governments adhere to these principles when enacting routing regulations, rulemaking at the Federal level is unnecessary.

We believe that progress is being made, albeit slowly, in developing and disseminating the information needed by hazardous materials program planners and managers at all levels of government. There is clear evidence of increased communication among State and local officials and between them and affected producers, users, and transporters of hazardous materials. Significant on the list of issues being addressed by this expanding network of concerned parties are the problems and conditions which are attacked but usually not solved by formally mandated prenotification and routing schemes.

Given these encouraging signs, we believe that the time is right for the Department to take the lead in a comprehensive cooperative effort to define the specific requirements of all concerned parties and to proceed at once to implement the most effective means for satisfying them. We believe that the use of Federal rulemaking muscle should be held in abeyance pending such an effort to determine a more promising approach.

In concluding my prepared remarks, I would like to reiterate the Department's wholehearted endorsement of the purposes underlying title IV of S. 1108. Future enhancement of hazardous materials transportation safety cannot be achieved without a clear delineation of the rights and responsibilities of all parties concerned. Fortunately, the climate has never been better for the growth of Federal, State, local, and industry cooperation. Through the State hazardous materials enforcement development program and the newly authorized motor carrier safety grant program, the Department is working with the States to assist them in taking a more active role in insuring transportation safety. On their own initiative, State, local, and industry representatives have joined together to form a Hazardous Materials Transportation Coalition from whom you will hear later this morning, through which they can come to agreement on the effective balancing of competing demands.

Developments such as these demonstrate that there is no longer any significant opposition to the concept of national uniformity in hazardous materials transportation safety regulation. With coordination at an alltime high and national uniformity generally accepted as a regulatory goal, we believe that the hazardous materials transportation safety problems facing us today involve means rather than ends.

The desirability of a Federal-State-local government partnership in hazardous materials transportation safety is beyond dispute. The mechanics of implementation, however, give rise to practical considerations of resource development and distribution which will require creative approaches. In our judgment, title IV represents a timely and important step toward realizing such approaches.

In our statement we have raised some questions concerning certain aspects of the proposed legislation and made some general suggestions for modifications that we believe would strengthen it. We would very much welcome the opportunity to work with the committee to develop our suggestions further and to provide any other assistance you may wish to request of us.

Now Mr. Santman and I would be pleased to respond to any questions you might have, Mr. Chairman.

Senator DANFORTH. Thank you very much.

It is my understanding that the Department's primary concern with this title is the State enforcement grant aspect of it. Is that right?

Mr. DUGOFF. I would not characterize us as being concerned on the matter, Mr. Chairman. It is our judgment that given the authorities which recently have been made available to us through the Surface Transportation Assistance Act of 1982, we are already in a position to effect the kind of programmatic development that this title seeks through a separate grant program.

Senator DANFORTH. You would rather have one grant program than two grant programs.

Mr. DUGOFF. That is correct. It is our judgment that we can make the existing grant program work sufficiently to meet these ends. If that proves to be a misguided judgment, we would seek something new, but right now we are confident that it is moving precisely along the lines that are indicated.

Senator DANFORTH. And on schedule?

Mr. DUGOFF. And on schedule.

Senator DANFORTH. Could you just describe what that amounts to as a practical matter? What kind of grants are we talking about, for what?

Mr. **Dugoff**. The provisions of these grants are in all essential respects identical to those which would be called for in the proposed program, but whose scope is more general. They should permit us to underwrite 50 percent of the costs States incur in enforcing all regulations bearing on motor carrier safety. This would include not only hazardous materials regulations but also the regulations having to do with the design, operation, and maintenance of equipment and driver practices as well.

Senator **Danforth**. And do you have any view at this point as to the quantity of grants that will be required to do an adequate job?

Mr. **Dugoff**. I think we have an idea. We have some pretty well developed projections of cost as a result of experience on our State hazardous materials enforcement development contract program. It is our view at this time that of the moneys made available through the STAA, that share which we plan to dedicate to hazardous materials regulatory enforcement is sufficient.

What I have a less well developed feel for—I would have to defer to my colleagues in FHWA—is the overall adequacy of funding to cover the entire gamut of regulatory enforcement envisioned in that act. At this point we are confident that the moneys that will become available for hazardous materials regulatatory enforcement appear to be sufficient.

Senator **Danforth**. Is that the consensus of State governments as well, do you think?

Mr. **Dugoff**. I would not be comfortable in making that statement. Perhaps my colleague is more confident.

Mr. **Santman**. No, I do not think we can speak on behalf of the States yet as to their feel for how much they will need. Again, we are reflecting on our experience in the natural gas pipeline safety grant program. Under that program it really took a couple of years for things to shake out as to what an appropriate level of funding for a given State program would be. I would expect that the commercial vehicle grant program is going to go through that sort of a shakedown period until some good, generally accepted dollar figures for each State are developed.

Senator **Danforth**. Thank you very much.

Mr. **Dugoff**. Thank you, sir.

[The statement follows:]

STATEMENT OF HOWARD DUGOFF, ADMINISTRATOR
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Good morning, Mr. Chairman. I am pleased to be here this morning to speak on behalf of the Department of Transportation concerning Title IV of S. 1108, the "Highway Safety Act of 1983," the "Hazardous Materials Transportation Act (HMTA) Amendments of 1983."

In my statement, I will make a number of suggestions for changes in emphasis or approach in specific provisions of the proposed legislation. I would like to emphasize strongly that these suggestions should not be construed as reflecting a negative view. We, in fact, support the purposes of Title IV entirely. We agree with the underlying analysis of the problems associated with hazardous materials transportation, and with the specific areas identified as warranting more effective government attention.

We are especially pleased to note the bill's explicit recognition of the need for national uniformity in hazardous materials transportation regulations and for Federal, State, and local government collaboration in regulatory implementation. We have ourselves for some time been working towards these ends.

In the discussions following, I will describe some of our previous and ongoing related efforts as I present the Department's views on the proposed bill. The discussion will be organized according to three principal topics, the principal subjects of the proposed legislation: enforcement, training, and information.

Enforcement

The effectiveness of any safety rgulatory program depends on the credibility of its enforcement mechanism. The Federal hazardous materials transportation safety enforcement effort is divided among several of the Department's operating administrations. The United States Coast Guard, Federal Aviation Administration, Federal Highway Administration, and Federal Railroad Administration bear jurisdictional responsibility for enforcement action relating to transportation of hazardous materials by water, air, highway, and rail, respectively; RSPA's enforcement staff places primary emphasis on enforcement of regulations for manufacturers, reconditioners, and retesters of DOT specification containers, and for multi-modal shippers of hazardous materials.

This decentralized approach to enforcement at the Federal level, involving frequent and close coordination among the enforcement teams of the modal administrations, has proven quite effective in practice. The vast numbers of highway carriers of hazardous materials, however, make it extremely difficult to assure acceptable levels of regulatory compliance.

The proposed Section 121 of the HMTA would attack the problem of inadequate enforcement of the hazardous materials regulations through an approach that we in the Department have advocated as well — by increasing the involvement of state agencies and personnel in the inspection/enforcement effort. The underlying rationale for this approach is that, with a sound uniform body of safety standards, compliance can be assured by properly trained enforcement personnel at any level of government. In order to encourage the states to assume an appropriate and effective role in hazardous materials transportation regulation and enforcement, RSPA in 1981 initiated a State Hazardous Materials Enforcement Development (SHMED) Program. By contractual agreements executed under SHMED, we furnish technical and financial support to states that have provided for adoption of the Federal hazardous materials transportation safety regulations. This assistance enables states to develop enforcement capabilities within existing public safety agencies (most commonly the highway patrol), thereby increasing total resources devoted to safety enforcement at a fraction of the cost that would be required to expand the Federal enforcement staff, and providing an incentive for state adoption of the Federal regulations leading to a uniform nationwide standard of safety. In 1982, the program was expanded from five to sixteen states; we plan a further expansion to 28 states in FY 1983 and 1984. Individual contracts with state participants are of three years' duration. Our funding assistance will peak in FY 1984, with decreasing amounts committed through FY 1987.

We are now working to phase the SHMED program participants into the new grant-in-aid program for motor carrier safety enforcement created by Section 402 of the Surface Transportation Assistance Act (STAA) of 1982. That legislation authorized the Department "to make grants to states for the development or implementation of programs for the enforcement of Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety." The Act defines "commercial vehicles" to include all vehicles, whether self-propelled or towed, that are used to transport hazardous materials in commerce. Thus the important objectives of proposed Section 121 are effectively addressed by the Commercial Vehicle Safety Grant Program authorized by the STAA and we are moving toward expeditious implementation of the STAA provisions. Accordingly, the proposed Section 121 grant program is not needed.

Training

A particularly important aspect of the national program to assure safety in the transportation of hazardous material is the provision of appropriate training to the public and private sector personnel who work in the field.

In analyzing the needs for hazardous materials training, and the proper governmental response to these needs, it is useful to note that the needs fall into three distinct, but related, categories.

The first category derives from the private sector. The commerical entities engaged in hazardous materials transportation seek training for their personnel on the practical requirements of the safety regulations and the most effective means of compliance. Such education enables them to prevent accidents and thereby avoid liability.

The second and third categories of hazardous materials training needs derive from the public sector. Training for inspectors and other government personnel at both the Federal and state levels is indispensable to assuring effective and consistent enforcement of the hazardous materials regulations. As the Department's ongoing efforts to encourage a more active state role come to fruition, demand for such training continues to grow at a substantial pace.

The final category of related training is for the state, and especially, local emergency service personnel, who must bear the burden of responding to the hazardous materials accidents that inevitably will occur.

Historically, the Department's primary response to hazardous materials training needs has been to support the delivery of formal training courses at our Transportation Safety Institute (TSI) in Oklahoma City, Oklahoma. Working closely with the TSI training staff, DOT subject matter experts have been able to provide high caliber training courses for Federal, state, local, and industry personnel. By combining home-study courses with classroom training and by seeking to "train the trainer" (i.e., training those who can return to their units and teach others), we have generally been able at least to satisfy what we consider to be our primary responsibility, for inspection and enforcement training.

EPA has also developed and delivered training for Federal, state, local, and private sector personnel on the topic of safe handling of hazardous substances in emergency response situations. Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), EPA and the U.S. Coast Guard share the responsibility for Federal response to hazardous substance emergencies.

Despite our best efforts, however, unsatisfied demands for training of those involved in hazardous materials transportation safety continue to grow. We believe that the proposed Section 120 of the HMTA, "Federal Training Programs for Incident Prevention and Response," is an entirely appropriate response to these demands, and that it represents a generally sound approach to improving and expanding safety training for shippers and carriers, inspection and enforcement personnel, and those responsible for emergency preparedness and response. The proposal is consistent not only with our views, but with the findings of numerous studies of hazardous materials safety needs by knowledgeable outside parties. We would strongly urge, however, that the proposed Section be modified to define more precisely the appropriate roles of DOT and FEMA, and to articulate explicitly the responsibility of shippers and carriers in providing safety and regulatory compliance training to their own personnel.

Under the Hazardous Materials Transportation Act, DOT's primary role is one of accident prevention through standard-setting and enforcement. Our major training effort, therefore, is directed at Federal and state enforcement personnel. FEMA, on the other

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hand, was created to provide a single focal point for all Federal emergency preparedness, mitigation, and response activities. FEMA is chartered to enhance Federal, state, and local resources devoted to preparing for and responding to the full range of emergencies. Since response to hazardous materials accidents is but one element of a larger capability to respond to emergencies in general, the role of DOT is limited to one of providing technical resource support.

For these reasons, we believe that the language in Section 120 should be amended to designate as DOT activities: evaluation of shipper/carrier and inspection/enforcement training programs; development of supplemental programs in these areas; response and removal activities in coastal areas under CERCLA; and related information dissemination activities. As to emergency preparedness/response counterpart activities, lead responsibility should be placed in FEMA with an express requirement for coordination with DOT. We would also suggest that there be an express recognition that shippers and carriers, not DOT or FEMA, are expected to carry the financial burden for delivering training to their personnel. We believe that, with the suggested amendments, Section 120 could serve as a vehicle for significantly improving coordination of the respective responsibilities of DOT and FEMA, and for generally enhancing the effectiveness of available hazardous materials safety training.

Paragraph (d) of Section 120 directs the Secretary of Transportation, to the extent practicable, to "establish or encourage the establishment of regional training centers." DOT maintains a training facility in Oklahoma City which provides training in inspection/enforcement on location and at prearranged sites around the nation. Analysis of the Institute's training capacity indicates that it can meet all current requirements for Federal and state hazardous materials inspector training. We agree that a regional approach to training could be quite effective in reaching increased numbers of state, local, and industry personnel. We believe, however, that such an undertaking is best suited to a non-Federal inititative, ideally led by combinations of state and local governments with support from the private sector and Federal agencies such as FEMA and EPA, as well as DOT. We would therefore suggest that the language of Section 102(d) be amended to require that the Secretary of Transportation "encourage and support" the establishment of regional training centers rather than "establish or encourage" their establishment.

Information

Among the resources required to implement a successful hazardous materials safety program, none is more critical than basic information. In some circumstances, as in the case of on-site response to an emergency, the need for information is immediate. The Department has taken a number of important actions to satisfy such immediate needs. As required by the HMTA, an emergency response hotline has been established within the National Response Center operated by the U.S. Coast Guard. Through this service, state and local emergency response personnel can obtain real-time advice on dealing with an emergency. The center is data-linked to CHEMTREC, a service of the Chemical Manufacturers Association, which provides a centralized source of chemical emergency response information and assistance. Section 406 of S. 1108 would amend the HMTA to clarify the Secretary's authority to utilize this unique supplementary service, a measure we have requested in previous legislative proposals.

We have also developed an Emergency Response Guidebook (ERG) to assist those officials directly involved in responding to accidents. Linked to the mandatory identification system requiring vehicles to display a placard with the four-digit number identifying the hazardous material being transported, the ERG enables persons unfamiliar with chemical names to correctly identify the hazardous materials(s) involved and the correct safety measures to be taken immediately. Working with the International Association of Fire Chiefs, we have been able to place approximately 750,000 copies of the first edition of the ERG in the hands of civil defense agencies, police and fire departments and other public safety organizations throughout the country. A second edition of the ERG soon to be released will incorporate changes and innovations in hazardous materials technology which have occurred since the first edition was published.

While the National Response Center and the ERG provide immediate assistance during emergencies, they do not address another, equally important class of related information needs, namely, the needs of program and institutional planners for accurate and comprehensive data concerning the types and amounts of hazardous materials shipped through a particular jurisdiction, shipment frequency, modes of shipment, packaging specifications, and the like. Emergency preparedness planners at the community level, in particular, need such information to prepare for hazardous materials transportation emergencies -- to anticipate the kinds of accidents most likely to occur, the equipment necessary to respond, and the entity to which crisis management should be delegated. In an attempt to encourage this kind of activity, in 1980 we supported the proposal of a regional council of governments to examine hazardous materials transportation in its region and its current ability to respond to emergencies. This proved to be such a productive exercise that, in 1981, we initiated six emergency response demonstration projects. The participating organizations include state, county, regional, and municipal governments located in areas with different geography, demographics, and levels of commercial activity. The results of these demonstrations will provide planning guides for communities all across the Nation. Last month the first public presentation of the results of these projects was made before the U.S. Conference of Mayors. This marked the start of what we intend to be an ongoing process of outward communication.

Notwithstanding these good beginning efforts, many local and state government, industry, and consumer associations remain critical of Federal emergency response assistance programs, especially because they do not adequately address the critical information needs. Feelings that the Federal government has not been sufficiently responsive have prompted many state and local governments to impose severe restrictions on hazardous materials traffic.

Section 122 of proposed Subtitle B of the HMTA attempts to address the shortcomings cited above by authorizing the Department to promulgate routing regulations and a system of prenotification. We do not believe the proposed approach would accomplish the purpose; in fact, the Department already possesses authority to promulgate such regulations under existing provisions of the HMTA.

Prenotification -- a system whereby a state or local government is notified by shippers and/or carriers in advance of shipments of hazardous materials to be moved through its jurisdiction -- is represented by its advocates as a method of improving the effectiveness of local enforcement and emergency preparedness activities. It is far from clear to us, however, that any form of local, state, or Federally mandated prenotification scheme will result in the necessary improvement. The logistical problems involved in implementing such a system would be immense, and preliminary analysis indicates that the cost of implementation, both to industry and state and local governments, would outweigh the potential benefits to emergency response programs.

We believe that there are more efficient and less costly methods of gathering information necessary to emergency response programs than prenotification. Some of these alternatives, such as surveying existing traffic volume and projecting traffic flow, are currently being demonstrated in the state and local pilot projects that I referred to earlier in my testimony.

Our view is similar regarding the proposed routing provision. We have long and publicly expressed our belief in the safety benefits of well-reasoned routing and other traffic control measures for hazardous materials transportation. Routing restrictions on hazardous materials traffic are a proper element of state and local government highway traffic control activities. To avoid placing unnecessary burdens on commerce and to be consistent with the Federal regulations, however, such restrictions must be adopted through a process that considers the impacts of the requirment on other jurisdictions and permits those jurisdictions to participate in the process. The requirement must have the effect of enhancing not only the safety of the citizens of the enacting jurisdiction, but overall public safety, as well. So long as state and local governments adhere to these principles when enacting routing regulations, rulemaking at the Federal level is unnecessary.

We believe that progress is being made, albeit slowly, in developing and disseminating the information needed by hazardous materials program planners and managers at all levels of government. There is clear evidence of increased communication among state and local officials; and between them and affected producers, users, and transporters of hazardous materials. Significant on the list of issues being addressed by this expanding network of concerned parties are the problems and conditions which are attacked, but usually not solved, by formally mandated "prenotification" and "routing" schemes.

Given these encouraging signs, we believe that the use of Federal rulemaking muscle should be held in abeyance pending a systematic analysis of information requirements. We believe that the time is now ripe to undertake a wide-scale examination of the potential sources and applications of information on hazardous materials transportation. Rather than focusing on rulemaking, we believe that greater benefits will derive from a comprehensive, cooperative effort to define the specific data requirements of concerned public and private sector entities, and to develop the most efficient and effective mechanisms for satisfying them.

Conclusion

In concluding my testimony today, I would like to restate the Department's wholehearted endorsement of the purposes underlying Title IV of S. 1108. Future enhancement of hazardous materials transportation safety cannot be achieved without a clear delineation of the rights and responsibilities of all parties concerned. Fortunately, the climate has never been better for the growth of Federal, state, local, and industry cooperation. Through the SHMED program and the newly-authorized motor carrier safety grant program, DOT is working with the states to assist them in taking a more active role in ensuring transportation safety. And, on their own initiative, state, local, and industry representatives have joined together to form a Hazardous Materials Transportation Coalition through which they can come to agreement on the effective balancing of competing demands.

Developments such as these demonstrate that there is no longer any significant opposition to the concept of national uniformity in hazardous materials transportation safety regulation. With coordination at an all-time high, and national uniformity generally accepted as a regulatory goal, we believe that the hazardous materials transportation safety problems facing us today involve means rather than ends.

The desirability of a Federal/state/local partnership in hazardous materials transportation safety is beyond dispute. The mechanics of implementation, however, give rise to practical considerations of resource distribution which will require creative approaches. In our judgment, Title IV represents a timely and important step towards realizing such approaches. In this statement, we have raised questions concerning certain aspects of the proposed legislation, and made some general suggestions for modifications that we believe would strength it. We would very much welcome the opportunity to work with the Committee to develop these suggestions further and provide any other assistance you may desire.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question. How do you envision DOT, FEMA, and the private sector working together to initiate a more comprehensive enforcement and emergency response training scheme? What incentives exist or could be created to ensure that such coordination will indeed lead to better training programs, particularly if the financial burden, as you suggest, would be placed on shippers and carriers? What is DOT's reaction to the proposal for Departmental certification of training programs as a way of ensuring higher quality training? What other, specific proposals would you make to ensure the quality and uniformity of training programs?

Answer. Hazardous materials training needs fall into three distinct categories: (1) the need to train inspectors and other government personnel to ensure effective and consistent enforcement of the hazardous materials regulations; (2) the need to train emergency services personnel who must bear the burden of responding to hazardous materials accidents; and (3) the need to train industry personnel in the requirements imposed by the regulations and the most effective means of compliance.

Under the Hazardous Materials Transportation Act, DOT's primary role is one of accident prevention through standard-setting and enforcement. The training needs of government inspectors and other regulatory enforcement personnel thus impose a unique and unshirkable obligation on the Department, particularly in light of our recent efforts to involve the states more fully in intrastate regulatory enforcement activity. Enforcement/compliance training is an exclusively DOT responsibility. We are meeting this responsibility through programs conducted by our training facility in Oklahoma City. We believe that its training capacity is sufficient to meet all current requirements for Federal and state hazardous materials inspector training.

The Federal Emergency Management Agency was chartered to enhance Federal, state, and local resources devoted to preparing for and responding to all emergencies. Indeed, FEMA has a comprehensive management and operational philosophy in the field of emergency response that ranges from the preparation of plans and warning systems to mitigation procedures, emergency operations, rehabilitation, and recovery activities. Its activity includes training and drills, postdisaster critiques and evaluations, annual review programs, and research.

Because of its encompassing charter in the area of emergency preparedness, FEMA is primarily responsible for providing the training necessary to assure effective emergency response. The DOT role is one of providing technical expertise and resource support. We naturally expect to work closely with FEMA to provide accurate technical information in the context of that agency's guidance for planning and response procedures.

Neither DOT nor FEMA expects state and local governments to shoulder the entire financial burden of training their enforcement and emergency response personnel. This is not the case, however, for training of industry personnel. Shippers and carriers are required to take all steps necessary to comply with the hazardous materials regulations, including providing appropriate training to their employees when necessary. This is not a Federal responsibility. The financial burden for training its personnel in regulatory requirements and compliance procedures should properly be borne by the industry.

Clearly, a cooperative intergovernmental and industry effort is the best approach to effecting overall training program improvements, particularly for emergency response and industry training. One method to assure that non-Federal training efforts are as effective as possible is to provide for DOT or FEMA certification of training programs along the lines suggested by several state and local government representatives. In this way, the Federal government could exercise a degree of quality-control over both government-and privately-sponsored training courses.

A regional approach could also be quite effective in providing accessible, quality training for state, local, and industry personnel. The Department would certainly encourage and support the development of state- or locally-sponsored hazardous materials training facilities in varied locations. Such facilities could probably not be self-sustaining if devoted to hazardous materials safety training alone, but an association with already-established institutions, such as police or fire academies, could be a viable option and is one that should be explored. We would emphasize, however, that such an undertaking should be a non-Federal initiative, combining state or local government leadership with private sector support.

Question. Portions of the Department's nuclear routing regulation, HM-164, have been, in effect, stayed pending a final court decision in New York City's case opposing the rule. How has the rule been implemeted in other parts of the country? Have the various states and localities worked with the Department in establishing preferred routes?

Answer. On August 10, 1983, the Second Circuit Court of Appeals reversed the district court judgment which had invalidated DOT's nuclear highway routing rule to the extent that the rule affected New York City. The case was remanded with instructions to enter a judgment upholding the rule (referred to by the docket number HM-164).

The only other legal challenge to HM-164 is being brought by the State of Ohio in the U.S. District Court for the Northern District of Ohio. At issue in that proceeding is not the validity of the rule, but the validity of the Appendix to the rule, wherein the Department articulated its policy concerning the relationship between State/local routing rules and the Federal rule. In the Appendix to HM-164, which was incorporated in the Federal regulations as Appendix A to 49 CFR Part 177, the Department identified types of State or local transportation rules which would be considered "inconsistent" within the meaning of the preemption provisions of the Hazardous Materials Transportation Act (49 U.S.C. 1811).

Many states have examined the nuclear transportation routes in their jurisdictions and have either designated preferred routes or concluded that the Interstate highway system is the best choice. In doing so, they have used the DOT "Guidelines for Selecting Preferred Highway Routes for Shipments of Large Quantity Radioactive Materials." Since the responsibility for designating preferred routes (in accordance with established guidelines) has been vested in the State routing agencies, the Department's involvement in the process has been primarily a matter of responding to requests for technical advice and information.

Question. A key state and local concern with respect to hazardous materials transportation is the need to have access to information about shipments through the various localities, a concern which has occasioned the continuing debate on prenotification. In your testimony, you mention the need to undertake an examination of the available information in this area. Do you believe that the available information is adequate for the states and localities to make the necessary decisions about resource allocation? Are there improvements that could be made in the current data collection on shipments and accidents by the Department and others to better accommodate the needs of all the interested parties?

Answer. While the DOT maintains an information system on hazardous materials incidents, it does not collect commodity flow data at a level sufficiently disaggregated that they can be meaningfully applied to the planning activities of any given locality. Data for purposes of risk assessment, resource allocation, and other planning activities can be far more efficiently gathered and collated at the regional level. Area-specific information, such as location of certain fixed facilities, population distribution, and comparative safety characteristics of routes can be effectively gathered only regionally. The emergency response demonstration projects described on pages 8 and 9 of Mr. Dugoff's prepared testimony on S. 1108 have shown this to be the case. There each of the participating jurisdictions individually developed the information necessary to perform its planning tasks.

Likewise, in our State Hazardous Materials Enforcement Development program, one of the first steps taken by each participating state has been the gathering of hazardous material movement information and its assessment for purposes of planning and scheduling truck inspections. There also the evidence is clear that locally derived information is the key.

Where significant improvements can be made is in the means available to the localities to collect the data. Toward this end, MTB is initiating an examination of potential sources of information, an assessment of different approaches to data collection, and an evaluation of the applicability and appropriateness of these sources and approaches for regions of different characteristics.

The demonstration projects are but a start. The approaches that they embody will be more systematically pursued, and the results more widely shared.

Senator **Danforth**. The next witness is Fred Villella of FEMA.

STATEMENT OF FRED J. VILLELLA, ASSOCIATE DIRECTOR, TRAINING AND FIRE PROGRAMS, FEDERAL EMERGENCY MANAGEMENT AGENCY, ACCOMPANIED BY EDWARD WALL, U.S. FIRE ADMINISTRATION; JAMES CRAIG, NATIONAL FIRE ACADEMY; AND ANDREW C. CASPER, EMERGENCY MANAGEMENT INSTITUTE

Mr. **Villella**. Mr. Chairman, I am joined at the table by Mr. Ed Wall, representing the U.S. Fire Administration; Mr. Jim Craig, representing the National Fire Academy; and Mr. Andy Casper from the Emergency Management Institute. Each of these gentlemen is involved in training and programing within the broad hazardous materials training area at the National Emergency Training Center in Emmitsburg, Md.

I am representing the Director of the Federal Emergency Management Agency as the Associate Director for Training and Fire Programs.

We are delighted to appear before this committee to discuss a subject of serious concern to our Nation. The hazardous materials problem that confronts the communities across the Nation represents a major potential peril to the population as a contemporary technological hazard.

The Hazardous Materials Transportation Act is of considerable interest to the Federal Emergency Management Agency in that we are substantially involved in the hazardous materials programs area, and the fact that this bill addresses responsibilities for the agency in the preparedness area related to hazardous materials.

This administration is concerned on a daily basis with the protection of the population. And, the Federal agency responsible for the coordination of responses to disasters is the Federal Emergency Management Agency [FEMA]. As directed by the Congress, the President of the United States established the agency to insure among all Federal agencies an effective, coordinated, predictable response acceptable to all hazards and perils that face Americans. The focus of FEMA has been to enhance the capacities of the State and local levels in response to an entire spectrum of emergencies, including consequences of hazardous materials incident.

FEMA has established a productive relationship with the Department of Transportation, the Environmental Protection Agency, and other Federal agencies in this broad area. It is, for us, the beginning of a meaningful approach to avoid disjointed Government and industry efforts in the expenditure of dollars. And, it will provide an effective enhancement of the Federal, State, local, and industry partnership on behalf of the health and safety of Americans. A clear delineation of responsibilities is still necessary. However, this cooperative collaboration is an important first step.

I would like to give you a brief overview of FEMA's programs as they relate to this broad subject. Under Executive Order 12148, the Director of the Agency is charged by the President to coordinate and set national policy on all Federal activities relating to emergency and disaster preparedness, mitigation, response, and recovery. Also, the Director of FEMA was named the Federal focal point to coordinate national emergency activities across the full spectrum of disasters with State and local governments.

In carrying out these assignments, the Agency works with all Federal agencies on their emergency programs. Our charter, to increase the state of readiness at the State and local levels for disaster situations, covers the total range of emergency and disaster activities. These include major natural disasters such as fires, floods, earthquakes, tornadoes, and hurricanes as well as manmade and technical disasters such as hazardous materials.

FEMA introduced this year a new system described as the integrated emergency management system [IEMS]. It is a comprehensive and all-encompassing preparedness posture for all emergencies. This approach is designed to build capacities to deal with the unique requirements of each emergency and foster a full Federal, State, and local partnership for achieving common national goals. It builds on the foundation of existing emergency management plans and capabilities to broaden their applicability to the full spectrum of emergencies.

By following this process, a community can establish an integrated emergency management system with readiness to deal with both the common and unique elements of preparedness.

The Agency's Training and Fire Programs Directorate includes the Fire Administration, the National Fire Academy, the Emergency Management Institute, and is located at the National Emergency Training Center in Emmitsburg, Md. The Directorate is responsible for developing, delivering, and administering training programs and other projects designed to improve the capacity of State and local government emergency preparedness.

This training is designed to equip emergency managers and emergency responders in all types of hazards. The techniques used for a particular emergency are essentially applicable to all emergencies. For example, warning devices, evacuation plans, emergency shelter, emergency medical assistance, among others, would be needed to handle hazardous materials incidents as well as earthquakes, hurricanes, and other emergencies. FEMA believes that one of the best training approaches for preparedness for such emergencies is through training for all emergencies. The comprehensive emergency training programs currently being presented through the National Emergency Training Center are adequate for national purposes. In addition, we are providing training for the trainers at the State and local levels in increasing quantities. We therefore question the need for establishing new Federal training centers or new Federal grant programs that focus exclusively on training for specific type emergencies.

In recognition of the fact that fire personnel are usually the first to respond to hazardous materials incidents, the Fire Administration has targeted a significant portion of its resources to address these problems. The projects designed are those to improve firefighters' turnout uniforms, self-contained breathing apparatus, and related personal safety items that have been under development for some time. In association with the medical profession, a standard protocol to assist medical personnel in evaluating the extent of injuries as the patient is admitted through hospital emergency rooms is aiso being developed.

FEMA is planning to expand its hazardous materials program in order to support the Nation's fire services, principally, and other emergency services in its expanding role for dealing with the increasing problem of hazardous material substances and waste. Hazardous materials transportation is but one segment of the major problems facing the emergency management forces of our country.

The individuals who face the dangerous task of responding to all of these types of emergencies must routinely take immediate action and frequently suffer death and injury because they have not been sufficiently trained. Often these response forces are unaware of the hazardous content of the structures in which they are fighting the fires until they are in fact hospitalized. This recently occurred in Newark, N.J., when firefighters were responding to what they thought to be a routine fire and encountered stored toxic waste materials.

Mr. Chairman, in considering this legislation, we respectfully suggest that the committee recognize that planning guides and planning documents related to hazardous materials have been available for some time. Preparedness and training, in our view, are the areas warranting immediate attention and action. To carry out the overall objectives of this bill, the Director of the Agency is in the process of establishing a task force, comprised of all appropriate agencies, to establish a clear, coordinated program for domestic hazardous materials accidents, planning management, and response, with emphasis on the training and preparedness contemplated by this legislation.

Training for emergency response forces should remain a priority requirement within the Federal Government. The State and local mechanism provided by the training network within the Agency should be used to build skills and capabilities across the Nation in the critical area of emergency preparedness and response to incidents involving hazardous materials.

We believe that technical prevention and skill training related to enforcement and handling of materials and substances should remain with the respective agencies, the Department of Transportation and the Environmental Protection Agency.

FEMA has developed an effective planning process with its integrated emergency management system. All hazardous materials planning, both preparedness and response, should be and will be addressed in this integrated process.

Mr. Chairman, we thank you for this opportunity, and we will be delighted to answer any questions you have.

Senator DANFORTH. Thank you.

Would it be your view that the hazardous materials section of the bill is superfluous?

Mr. VILLELLA. No, it would not. We are suggesting some change in emphasis. We think the bill has identified all of the principal characteristics that are, in fact, a problem in the subject area of hazardous materials transportation.

Senator DANFORTH. As far as the bill is concerned, essentially it is a matter of training with respect to both dealing with hazardous materials incidents that occur, and also enforcement of transportation itself. But with respect to FEMA's work, is it your view that we are in pretty good shape right now?

Mr. VILLELLA. Yes, based upon an assessment our new integrated emergency management system approach. Mr. Chairman, prior to this newly developed, integrated approach, many of the emergency situations were being addressed by type. This is not our best judgment now or our present approach. We need a comprehensive and coordinated all-emergency method of preparedness and response capability. This has been emphasized at FEMA just this year as we move forward to integrate elements which focus on the all-emergency approach.

The planning portion obviously is a very important characteristic of the bill. And the bill accurately identifies those common failures and common problems in the preparedness and response spectrum. I think there were five points in the relevant section of the bill which were very accurate. What we propose within our integrated emergency management system [IEMS] is a common planning system which identifies common functions that permeate all emergencies. Where the States are given the opportunity to work with the local governments, we help the States determine what their shortcomings are and what may be their systemic difficulties.

Certainly, as we have seen this past year in the disaster area, State and local emergency officials have been confronted with almost every possible hazard except a nuclear explosion. Therefore, the planning that has to take place within that State must be an all-hazard planning. The program to accomplish this planning is appropriately characterized within the integrated system that is part of FEMA's program activity now supporting State and local efforts.

Senator Danforth. How would you characterize your relationship with State and local governments?

Mr. Villella. We work closely with the States and local governments. I suspect that FEMA, as a Federal, independent agency, probably has more frequent contact with State and local governments than most other Federal agencies. We train State and local government officials through our National Emergency Training Center which was established in June 1981. Since then, we have trained nearly 200,000 individuals from the State and local areas; 96 percent of our training dollars and 96 percent of our programs are directed at the State and local levels. The States work in conjunction with our State and local programs directorate for the provision of annual program planning documents upon which funding is based for those particular States through FEMA's 10 Federal regions.

In the FEMA system, the State proposes to do certain planning activities and conduct improvement activities, for example, in emergency operations centers. It programs these activities in conjunction with FEMA's State and local programs directorate and then builds a long-range plan in order to satisfy the shortcomings that have been identified.

I believe our relationship with the State and local units of government is very harmonious.

Senator Danforth. Thank you very much, sir.

Mr. Villella. Thank you, Senator.

[The statement follows:]

STATEMENT OF FRED J. VILLELLA, ASSOCIATE DIRECTOR, TRAINING AND FIRE PROGRAMS DIRECTORATE, FEDERAL EMERGENCY MANAGEMENT AGENCY

We are delighted to appear before this Committee on behalf of the Federal Emergency Management Agency. The Hazardous Materials Transportation Act (HMTA) is of considerable interest to FEMA in that we are substantially involved in hazardous materials programs and the fact that this bill addresses responsibilities for FEMA in the preparedness area related to hazardous materials.

The Federal Emergency Management Agency is very supportive of an improved Federal, state, local, and industry partnership in the emergency preparedness profile of communities across the nation to deal with hazardous materials accidents.

The focus of the Federal Emergency Management Agency (FEMA) has been to enhance the capacities of the state and local level and respond to an entire spectrum of emergencies including consequences of hazardous materials accidents of significant proportion.

FEMA has established a productive relationship with the Department of Transportation (DOT), the Environmental Protection Agency (EPA), and other Federal agencies in the hazardous materials transportation area. It is the beginning of a meaningful approach to avoid disjointed government and industry efforts in the expenditure of dollars, and will provide effective enhancement of the Federal, state, local and industry partnership in behalf of the health and safety of Americans.

A clear delineation of responsibilities is still necessary, however, this cooperative collaboration is an important first step.

I would like to give you a brief overview of FEMA's programs, and relate them in a more specific way to the problems of increasing hazardous material incidents that endanger the lives of our citizens and the emergency personnel who must cope with this problem daily.

Under Executive Order 12148, the Director of the Federal Emergency Management Agency is charged by the President to coordinate and set national policy on all Federal activities relating to emergency and disaster preparedness, mitigation, response, and recovery. Also, the Director is named by the President to the Federal focal point to coordinate national emergency activities, across the full spectrum of disasters, with state and local government.

In carrying out these assignments, FEMA works with all Federal agencies on their emergency programs. Our charter, to increase the state of readiness at the state and local levels for disaster situations, covers the total range of emergency and disaster activities including major natural disasters such as fires, floods, earthquakes, tornadoes, and hurricanes as well as man-made and technical disasters such as hazardous materials incidents. FEMA was established to foster the development of a truly integrated national system for emergency management and provide a solid infra-structure, at Federal, State, and local levels and in the private sector, to plan for, mitigate and respond to emergencies of all types. As a matter of fact, we are currently involved in negotiating an interagency agreement with the Environmental Protection Agency to provide training to state and local personnel and policy level emergency planners in contingency planning, simulation exercises in hazardous waste incidents, assessment of hazardous waste incidents, and safety training for the emergency preparedness. The emphasis of this program will be for the training of the trainers.

FEMA was created by Presidential Reorganization Plan No. 3 of 1978. It was reorganized by the Director, Louis O. Giuffrida in 1981 and its new organizational structure is designed to take greater advantage of the functional similarities among its various preparedness and response activities. FEMA serves as the Federal focus on the National fire problem and through its training and fire programs, serves to enhance the professional development of those involved in fire prevention and control and other related activities which include hazardous materials.

The integrated approach is designed to build capabilities to deal with the unique requirements of each type of emergency and: foster a full Federal, State, and local partnership for achieving common national goals; and build on the foundation of existing emergency management plans systems, and capabilities to broaden their applicability to the full spectrum of emergencies.

By following this process, a community can establish an Integrated Emergency Management System, with readiness to deal with both the common and unique elements of preparedness.

FEMA's Training and Fire Programs Directorate includes the U.S. Fire Administration, the National Fire Academy, and the Emergency Management Institute, and is located at the National Emergency Training Center in Emmitsburg, Maryland. This Directorate is responsible for developing, delivering, and administering training programs and other projects designed to improve the capacity state and local government emergency preparedness.

This training is designed to equip emergency managers and emergency responders in all types of hazards. The techniques used for an emergency are essentially applicable to all emergencies. For example, warning devices, evacuation plans, emergency shelter, emergency medical assistance, etc. would be needed to handle hazardous materials incidents as well as earthquakes hurricanes, tornadoes, explosions, etc. FEMA believes that the best training approach for such emergencies is through training for all emergencies. The comprehensive emergency training programs currently being presented at the National Emergency Training Center are adequate for national purposes. In addition, we are providing training for the "trainers" at the state and local level. We therefore, do not favor establishing new Federal Training Centers, or new Federal grant programs that focus exclusively on training for specific types of emergencies.

In recognition of the fact that fire personnel are generally among the first to respond to a hazardous materials incidents, the U.S. Fire Administration is targeting a major portion of its resources to mitigating the problem. Projects designed to improve the firefighters turn-out uniforms, self-contained breathing apparatus and related personal safety items have been underway for some time. In association with the College of Emergency Physicians a standard protocol to assist medical personnel in evaluating the extent of injuries is being developed.

FEMA is planning to expand its hazardous materials program in order to support the Nation's fire service in its expanding role in dealing with the increasing problem of hazardous materials, substances, and wastes. Hazardous materials transportation is but one segment of the major problems facing the emergency management forces of our country. There are serious national concerns in communities across the nation for the potential of hazardous material accidents. There are similar concerns about the manufacture, use, storage, and distribution of these materials. Radiological materials create unique problems of their own, both in transportation and potential for accidents. FEMA's role in the radiological field involves power plants and as a result of the Director's efforts, now includes all Department of Defense storage sites. In addition, our Emergency Management Institute is heavily involved in the delivery of radiological emergency preparedness (REP) course. These courses, done in cooperation with the Department of Energy, incorporates exercises based on six different radiological type accidents, and is designed for federal, state, and local radiological emergency response teams. Other courses address the transportation accident situation and the medical response team to radiation accidents.

The individuals who face the dangerous task of responding to all of these types of emergencies must routinely take immediate action and frequently suffer death and injury because they have not been sufficiently trained. Often these response forces are unaware of the hazardous content of the structures in which they are fighting the fire, until they are hospitalized, as occurred recently in Newark, New Jersey, when firefighters responding to what they thought to be a routine fire encountered stored waste toxic materials.

Mr. Chairman, in considering this legislation, I respectfully suggest that the committee recognize that planning guides and planning documents related to hazardous materials have been available for some time. In my opinion, it would not be productive for programs designed to cope with hazardous materials incidents to focus primarily on study, evaluation, assessment and planning. Preparedness and training, in my view are the areas warranting immediate attention and action. To carry out the overall objectives of this bill, the Director of FEMA is in the process of establishing a task force comprised of all appropriate agencies to establish a clear, coordinated program for domestic hazardous materials accidents—planning management and response—with emphasis on the training contemplated by this legislation.

Training for emergency response forces should remain a priority requirement within the federal government. The state and local mechanism provided by the FEMA training network should be used to build skills and capabilities across the nation in the critical area of emergency preparedness and response to incidents involving hazardous materials.

FEMA is the designated Federal agency responsible for development and delivery of emergency management training. However, the Department of Transportation, EPA, and others have been participating at our request and in fact are providing agency resources for training carried on by the National Emergency Training Center.

On the other hand, we believe that technical prevention and skill training related to enforcement and handling of materials and substances should remain with respective agencies, DOT and EPA.

FEMA has developed an effective planning process with its Integrated Emergency Management System. All hazardous materials planning, both preparedness and response, should be addressed in the Integrated Emergency Management Systems context.

Thank you, Mr. Chairman, for giving us the opportunity to provide this statement to you and the members of this Committee. I'll be happy to respond to any questions that you, or any of the members may wish to direct to me.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. In your testimony, you outlined the respective roles of FEMA and other Federal agencies related to hazardous materials transportation. In your view, how could FEMA and DOT cooperatively develop programs and recommend methods to improve existing training programs?

Answer. Cooperative discussions between FEMA and DOT to develop programs and recommend methods to improve existing training programs have begun. FEMA has established an intra-agency FEMA Hazardous Materials Task Force. This Task Force, which was convened on July 20 at the FEMA National Emergency Training Center (NETC), has several objectives, among which is the identification of current hazardous material training activities being conducted among the Federal departments and agencies and other non-Federal organizations. The Task Force will focus upon the identification of training requirements, identification of existing training to meet requirements, the need for new training programs, and recommendations on deployment of training at the Federal, State, and local levels. Subsequent tasks will include the development of effective evaluation tools to assess new, as well as existing, training programs. NETC has a curriculum outline for resident and field training under study. Other specifics related to interaction between FEMA and DOT can include the exchange of Agency instructors to provide instruction on those aspects of hazardous materials more specifically related to each agency; broadening individual instructor backgrounds within both agencies by attendance at courses sponsored by the respective agencies, such as the DOT-Transportation Safety Institute courses and seminars for FEMA instructors; and examination of the hazardous materials courses offered by the DOT-Colorado Transportation Safety Institute Center as well as the FEMA National Emergency Training Center. Our goal is to ultimately provide clarification of each agency's training roles that will more effectively prevent duplication or overlap of existing training programs.

Question 2. In view of the respective roles of DOT and FEMA, what is your opinion of the provisions of Title IV of S. 1108 calling for joint action by two agencies?

Answer. The provisions of Title IV of S. 1108 calling for joint action by the two agencies poses no problems or conflict of interest since the respective roles of DOT and FEMA are essentially different and should tend to complement each other. DOT has a primary enforcement role of the specific regulations promulgated by the Agency, whereas FEMA, which is not a regulatory agency, has a mandate, through training and other efforts, to provide for maximum capacity building of emergency management activities at the State and local level which will ensure a predictable, coordinated, effective, as well as acceptable response capability to meet any contingency such as those posed by hazardous materials.

Question 3. In your testimony you indicate that the Federal Emergency Management Agency plans to expand its overall response program to include hazardous materials. For several years, concern has been raised about the agency's inaction in this area. What specific plans do you have in response to this concern and to effect such an expansion? In particular, you mention the establishment of a task force to formulate a coordinated program in this regard and state that preparedness is an area warranting "immediate attention and action." What is the timetable for the creation and work of such a task force? In formulating emergency response policy, what weaknesses do you see that could be responded to through such an effort?

Answer. The Federal Emergency Management Agency has been conducting planning and training for hazardous materials contingencies related to radiological incidents and training for all responders. Although we are not aware of concerns raised about FEMA's "inaction in this area", we have taken steps to expand our overall hazardous materials response program. The initial effort as outlined previously, takes the form of a Hazardous Materials Task Force. This group has been convened and has held several meetings at the FEMA National Emergency Training Center. The task force is an intra-agency task force that is outlining several objectives to be accomplished. The first meeting of the Task Force occurred on July 20, 1983, with two subsequent meetings. From the initial efforts of the task force, it has become quite apparent that there is a vast amount of legislation and regulation regarding various assignments and responsibilities among the Federal agencies for hazardous materials. Existing legislation appears to extend down into, and within, the individual agencies allowing duplication of functions within agencies as well as uncertainty as to exact roles and missions within the various subcomponents of the individual agencies. In some cases it appears that some organizations have grown and assumed additional roles and responsibilities beyond those initially envisioned. FEMA has a mandate to coordinate emergency management activities on an interagency basis, including planning and response to hazardous materials incidents. Accordingly, the task force will attempt to implement a coordinated program among the various Federal agencies. A weakness that presently exist, and which must be overcome, is the fragmentation of responsibilities among the various segments related to hazardous materials. This has allowed for duplication and lack of coordination which is turn has adversely affected the ability of the various agencies to be effective in meeting hazardous materials contigencies. This fragmentation and magnitude of participant agencies has also tended to limit the sharing of information regarding preparedness, response, recovery, and mitigation of hazardous materials incidents. It is envisioned that this task force will be able to implement a coordinated Emergency Readiness program among all Federal agencies.

Question 4. You mention a program initiated with the Environmental Protection Agency to provide a program to train-the-trainers. However, one of the concerns raised with respect to hazardous materials response training is the lack of trainers. How would you respond to this concern, and what action would you propose taking in this regard?

Answer. At present, there is a lack of adequately trained trainers to provide hazardous materials response training in the field. Currently, most hazardous materials training within FEMA has been oriented to end-user courses in which personnel are trained to respond to hazardous materials incidents. The National Emergency Training Center (NETC) is undertaking to convert many of these courses to train-the-trainer courses which may be designed either for delivery at the NETC or can be packaged and handed off as trainer courses to States, territories, DOD, and organizations such as fire departments within the large metropolitan areas. New methodology is being developed to convert courses for deployment via computer and/or video methodologies and will be pilot tested as computer-assisted instructional modules. Work is being done on the development of a national teleconferencing capability that will facilitate reaching a wide range of potential trainers in the field. FEMA recognizes that a cascading or pyramiding effect must be provided through an effective train-the-trainer program that develops and equips hazardous materials instructors in the field. For example, at the NETC National Fire Academy (NFA), the "Chemistry of Hazardous Materials" course is being converted for deployment as a computer-assisted instructional course, and the "Tactical Hazardous Materials" course is being converted to a train-the-trainer mode in order to train both end-users and trainers in the field. At the NETC Emergency Management Institute (EMI) a new "Fundamentals Course for Radiological Monitors" is being designed to address a variety of peacetime radiological incidents such as transportation and nuclear power plant incidents, isolated isotope problems, nuclear weapons accidents, and medical isotopes. This basic course will also be offered in a train-the-trainer mode. A "Hospital Emergency Department Management of Radiation Accidents" course has been developed as a hand-off package for hospital personnel and is being deployed in fiscal year 1984. A pre-hospital response to radiation accidents course is projected for deployment in fiscal year 1984 for emergency first responders.

Question 5. How does the Integrated Emergency Management System relate to the hazardous materials program?

Answer. The Integrated Emergency Management System, referred to as I-E-M-S, is an approach designed to build capabilities at the State and local levels to deal with the unique requirements of all types of emergencies. We believe that the best training for all emergencies is through training for all emergencies. A hazardous materials incident is an example of an emergency situation that shares some common elements required in all types of emergency situations such as—evacuation, shelter, communication, direction and control, law and order, food and medical supplies, and the like. Therefore, hazardous materials are "integrated" into training programs relating to the four phases of emergency management: mitigation, planning, response and recovery. A specific example is the newly designed and piloted Emergency Management Course at EMI; it provides an effective vehicle for performance based exercises that can relate to specific types of emergencies as well as to each of the above phases of integrated emergency management. The National Emergency Training Center offers programs in both the generic emergency management skills needed in I-E-M-S, and also addresses the technical needs in dealing with a hazardous materials incident both chemical and radiological.

Senator DANFORTH. Next we have a panel consisting of Chief Kamprad, president of the International Association of Fire Chiefs; Larry Dority of the Missouri Public Service Commission; and Frank Shafroth, legislative counsel, National League of Cities.

Chief Kamprad, would you like to go first?

STATEMENT OF CHARLES KAMPRAD, PRESIDENT, INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, INC.

Mr. KAMPRAD. Thank you. I am very pleased to be allowed to present the views of the fire chiefs across our Nation, and express our gratitude for your concern for the safety of citizens.

I suppose my written commentary will be entered into the record, and I do not intend to reiterate what has been presented. There are only a few points that I would like to bring forth, and that primarily would be in the area of training. You heard from Mr. Villella the operation going on with FEMA, and the cooperation of the IAFC with FEMA has been greatly enhanced over this year, and they are doing a splendid job with the facilities they have.

My concern is that they already have the established training facility, both on site and an outreach program, that are dedicated to many areas of training. To burden them with, if you will pardon the expression, a crash educational program on hazardous materials may require additional support in the form of staff.

I do not believe, in all honesty, as great a job as they (FEMA) are doing, that we should eliminate the ability of the State fire marshals to develop training within their own States. I think this would give the local fire chiefs an easier handle to accept this ability and advancement.

The fire chiefs believe that the Department of Transportation should be the area in which the shippers and the people in the industry receive their training and education, and that DOT remains the enforcing agency of the regulations.

We have worked with DOT closely in the development and the distribution of the "Hazardous Materials Handbook." I believe we put out over 600,000 of these booklets. They were designed primarily to fit in the glove compartment of a battallion chief's car, or other fire department apparatus. They have really been a tremendous asset to our ability to respond to a hazardous material incident with no future warning of what we are going into.

When we get there, we have to look for shipping tags and so forth, and this booklet provides us instantaneous information as to the best manner in which to mitigate the problem, and we really appreciated that. The bill presents some additional regulation imposed—I am sorry, preempts, the bill preempts any additional regulation being imposed by local authority. This is a great concern I have.

It suggests only on page 51, line 8, throughout, that the Secretary of DOT may do the following. It does not say he shall do it. It says he may do the following: Preplan the route, implement additional protection measures, and so forth. The Secretary is located in Washington, D.C., and in no way could he possibly have a handle on the local situation that the fire chief or police chief would have.

At the present time when hazardous materials are shipped through the city of St. Louis, the director of public safety is notified. The police department, if it is a real hot substance, will provide an escort for the vehicle, to eliminate to a great extent the hazard of vehicular accident. We will designate the route to be taken, because we know our area better than anyone else would.

We also designate the time that will be best to transport that material. Despite all the regulations currently in existence in our city, we are occasionally surprised when a barge comes through the port of St. Louis. At no time are we ever notified of any hazardous materials transported on the river, and we are the largest inland port in the country. I understand that is under the Coast Guard. They may get a notification. If they do, we are never given that information in advance, which we would really appreciate as much as we would on land-based vehicles.

So, because of these situations, I am opposed to paragraph 3 on page 43 giving this bill the preemptory function of eliminating local authorities' input.

[The statement follows:]

STATEMENT OF CHIEF CHARLES KAMPRAD, PRESIDENT, INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

Mr. Chairman, I am Charles Kamprad, President of the International Association of Fire Chiefs and former fire chief of St. Louis, Missouri. I am pleased to be here today to present our views regarding the Hazardous Materials Transportation Act Amendments of 1983.

The IAFC was organized in 1873. Since that time, the members of the association have recognized that hazardous materials incidents can overwhelm the capabilities of local fire departments. The history of these tragic disasters has convinced our members that an integrated effort on the part of local, state and federal governments is necessary for effectively managing hazardous materials incidents.

While community fire departments often share key responsibilities with other emergency services, it is important to emphasize that the fire service provides the crucial fire protection, emergency medical services and disaster response to such incidents.

I would like to cite one example. On April 16-17, 1947, the Texas City (Texas) Fire Department responded to a fire on board the cargo ship, S.S. Gradcamp. Shortly thereafter, its cargo of ammonium nitrate exploded, killing more than 450 persons including 26 fire fighter. Property loss was estimated at $50-million. The tragedy could have been minimized, or perhaps even avoided, if proper mitigation, planning and response procedures had been instituted.

The potential for an incident of this magnitude exists today. In fact, recent history is replete with hazardous materials incidents involving railroad tank cars, truck tankers and fixed facilities. The product involved can range from fuel oil and gasoline, to exotic chemicals and nuclear waste.

The IAFC is extremely concerned with the health risk resulting from exposure to chemical and hazardous materials. A National Institute of Occupational Health and Safety (NIOSH) Technical Assistance Report, TA 79-50, illustrates this point. During July 1974, members of the Alliance (Ohio) Fire Department responded to a warehouse fire involving toxaphene, chlordane and malathion. A epidemiological study conducted in 1979 ". . . showed significantly greater prevalences of heart disease, respiratory problems including coughing blood, severe headaches, loss of memory, more sick days and more hospitalization . . ." of these personnel involved in the fire fighting. Stronger language needs to be added to the bill to address the health and safety concerns of the emergency service personnel.

The members of the International Association of Fire Chiefs believe that these examples should be considered when you review the Hazardous Materials Transportation Act Amendments of 1983. In our opinion, the training and education of fire fighters and other emergency service personnel should be given top priority. This should include classroom and hands-on training for mitigation, emergency response and emergency medical treatment for exposure to hazardous materials.

I believe that the Federal Emergency Management Agency should be given lead authority in providing the requisite training and education to the fire service community and other emergency services. FEMA has a residential and outreach training and education system established through the National Fire Academy and Emergency Management Institute. This program can reach the millions of career and volunteer fire fighters who must respond to hazardous materials incidents.

In our opinion, the U.S. Department of Transportation (DOT) should be the lead agency for the regulation, inspection and enforcement of hazardous materials transportation. Also, DOT should take an active role to ensure that manufacturers and carriers are trained properly to avoid accidents and to assist with emergency response.

The IAFC cooperated with the Department of Transportation in the development and distribution of the Hazardous Materials Emergency Response Guidebook. We distributed more than 600,000 copies of the Guidebook to fire departments, police departments and civil defense agencies for use in emergency vehicles and training. The Guidebook was designed specifically to fit in the glove box of emergency vehicles to be used as a quick reference for those fire officers that respond to hazardous materials incidents.

During my visits to state and regional fire conferences, I have received numerous, positive comments on the value of the Emergency Response Guidebook. In fact, many chiefs have indicated that the availability of the Guidebook had a direct effect on life safety and reducing property loss.

The Department of Transportation is preparing a 1983 revised edition of the Hazardous Materials Emergency Response Guidebook. This revision is based on several years of actual use by emergency response personnel, as well as on a technical review from chemical industry representatives. I would recommend that language be added to the Hazardous Materials Transportation Act Amendments of 1983 to ensure that DOT has the necessary authority and funding to publish enough copies for all emergency response vehicles and training facilities.

The members of the IAFC support research and development efforts relating to emergency response. Fire fighting is extremely hazardous even under normal conditions. Add to this hazardous materials incidents, and the danger is increased significantly. Normal personal protective equipment was not designed to protect fire fighting personnel from hazardous materials. For example, many corrosives will erode the rubber on self contained breathing apparatus. Continuing research is needed to design appropriate protective equipment and techniques to handle various but specific hazardous materials incidents.

We also, are concerned with the emergency response planning grants. It has been our experience that federal grants get siphoned off either by outside consultants or at the state level. Emergency response planning needs to incorporate a "from the bottom-up" approach. The major focus of any plan must involve the local emergency services, then expand to county, regional, state and federal levels as an incident escalates into a major disaster. In any event, the local plan is the core of the overall planning process. In our opinion, allocating merely 25 percent of the grants to local government is insufficient.

The IAFC supports the provisions of Senate Bill 1108. We believe that the most critical areas for federal involvement are in training and technical assistance. Local government agencies have the primary responsibility for handling hazardous materials incidents, and they need the additional resources and support only the federal government can provide.

Thank you for consideration of our views.

Senator **Danforth**. I think that authority already exists in the law. That is, that somebody has to have the final say. You couldn't have, under the commerce clause, a State or a locality saying, well, absolutely nothing is going to move through this community. So the idea here is that together with the existing preemptive responsibility, there should be consultation, there should be a process by which State and local governments get into the act in determining what routes are used.

I think really the thrust of the bill is the opposite. It is to work within the existing constitutional responsibility over commerce. This is a Federal responsibility—to work with local governments, and to make sure that there is an accommodation and an agreement, rather than somebody up from on high shouting down to the local governments, telling them what to do.

Mr. **Kamprad**. We do not have any desire to stop commerce. That is not our desire whatsoever. It is only that we like to be made aware of a problem prior to being called to mitigate the problem after the fact.

Senator **Danforth**. I think that is intended to be the thrust of the bill.

Mr. Dority?

STATEMENT OF LARRY DORITY, REPRESENTING THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ACCOMPANIED BY LINDA KENT, ASSISTANT DIRECTOR OF CONGRESSIONAL AND PUBLIC RELATIONS

Mr. **Dority**. Thank you, Mr. Chairman. I am vice chairman of the Missouri Public Service Commission. I am appearing today on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as the NARUC.

Accompanying me today is Linda Kent, to my right, the assistant director of congressional relations for the NARUC.

The NARUC is a quasi-governmental, nonprofit organization founded in 1889, and within our membership are the governmental agencies of the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands, which are engaged in the regulation of utilities and carriers.

I appreciate this opportunity to express our support for S. 1108, the proposed Highway Safety Act of 1983. The NARUC has consistently endorsed legislative initiatives designed to improve the safety record of our Nation's motor carriers. In fact, the association drafted a proposed Motor Carrier Safety Act in 1969 to provide a program of Federal grants in aid to the States for the enforcement of Federal and State safety regulations and a hazardous materials transportation safety grants-in-aid program, similar to the program in title IV of this bill, in 1981.

We feel that S. 1108 establishes the best framework to encourage the prevention of hazardous materials transportation accidents by creating a State grants-in-aid program. In 1981, the NARUC conducted a survey to determine the States' interest in participating in a hazardous materials safety program, and at least 21 of the 31 responding State agencies supported the implementation of such a program.

Our member commissioners are aware of the advantages of this type of regulatory scheme, as most participate in the rail and/or natural gas pipeline safety grants in aid programs. The gas safety program has proved to be a model of Federal-State cooperation in its efficient implementation of interstate pipeline safety standards.

It is our hope that the hazardous materials transportation safety grant programs will achieve the same level of success. A workable State-Federal program as the one contemplated under S. 1108 requires that the Secretary of Transportation promulgate minimum Federal *safety regulations to* be adopted and enforced by the States, while leaving such areas as qualifications of inspectors, level of inspection effort, and the expenditure of State and Federal moneys to the discretion of the qualified State agencies designated to administer the program.

In order to strengthen the opportunities for Federal, State, and industry cooperation under this title of the measure, we would recommend that the committee adopt an amendment to create an advisory panel composed of Federal, State, and local government officials, as well as motor carrier and shipper representatives, to aid the Secretary in developing the necessary standards to implement this program.

We believe that the creation of such an advisory panel would substantially benefit the implementation of the hazardous materials safety program. A similar body, the Technical Pipeline Safety Standards Committee, created under the Natural Gas Pipeline Safety Act, greatly contributed to the success of the pipeline safety grants in aid programs. The panel we are proposing would provide a forum wherein experts in hazardous materials safety regulation would be able to resolve any program disruptions or potential conflicts.

The inclusion of State commissioners on the advisory board would permit the Secretary to hear the views of those officials who are actually implementing and enforcing the Federal standards. We hope the members of the committee would consider adopting such a provision. We have included proposed language to create the advisory panel in our written statement.

Our prime concern with S. 1108 concerns the potential preemption of the traditional authority of the States to regulate intrastate transportation. The States have maintained a highly effective record of enforcing various intrastate motor carrier safety standards, and we urge the committee to preserve that effort.

Mr. Chairman, implementation of the hazardous materials transportation grants in aid program and the commercial motor vehicle grant program, as mentioned in title III of the bill, will enable the Federal Government to establish a comprehensive highway safety program envisioned by the authors of this legislation. Utilizing State resources and personnel in carrying out these programs insures that Federal-State standards are enforced in a skilled manner at only a portion of the total cost. During this period of fiscal restraint, such an arrangement is practical and efficient.

More important, these programs are essential in protecting lives and preventing property damage. We urge the committee to approve this legislation with the changes we have suggested, and to authorize the necessary funding to encourage full participation on both the State and Federal levels.

In Missouri, we presently employ 19 personnel who deal with safety and hazardous materials transportation regulation. The Missouri PSC has adopted the present DOT regulations on hazardous materials, and all the 19 investigators have had training and experience in hazardous materials regulations, including a 2-week hazardous materials course conducted at the Colorado Training Institute in Denver.

The PSC is presently pursuing Federal funding from the DOT dealing with a State hazardous material enforcement development program, as referred to earlier by Mr. Dugoff of the DOT.

Mr. Chairman, we applaud your efforts to strengthen the opportunities for Federal, State, and industry cooperation.

Thank you very much.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and distinguished members of the committee, my name is Larry Dority and I am Vice Chairman of the Missouri Public Service Commission. I am testifying on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as the "NARUC". Accompanying me today are Paul Rodgers, NARUC Administrative Director and General Counsel; Rita A. Barmann, NARUC Director of Congressional Relations; and Linda Kent, NARUC Assistant Director of Congressional Relations.

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agenices of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands which are engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of government regulation in America.

We appreciate this opportunity to express our support for S. 1108, the proposed Highway Safety Act of 1983. The NARUC has consistently endorsed legislative initiatives designed to improve the safety record of our Nation's motor carriers. In fact, the Association drafted a proposed Motor Carrier Safety Act in 1969 to provide a program of Federal grants-in-aid to the States for the enforcement of Federal and State safety regulations.[1]

Recognizing the continuing need for strict safety standards and enforcement procedures, the Association applauds Senators Danforth, Packwood and Pell for introducing S. 1108. This comprehensive legislation addresses many aspects of highway safety by encouraging the implementation of standards which incorporate technological advances in truck and automobile safety, and by encouraging States to take action to combat drunk and drugged driving. However, the NARUC is particularly interested in Title III, the Motor Carrier Safety Act of 1983, and Title IV, the Hazardous Materials Transportation Act Amendments of 1983, of the bill. The remainder of my testimony will concentrate on those sections.

MOTOR CARRIER SAFETY

Since passing the Highway Safety Act of 1966 [2] Congress has recognized that motor carrier safety warrants special regulatory treatment at both the Federal and State levels. The need for such legislation is increasingly apparent. Data compiled by the National Transportation Safety Board indicates that fatalities and severe loss of property due to motor carrier accidents remains a major national problem.

Commercial motor vehicle safety is of particular concern to State regulators because of the larger carriers operating on our highways due to the new size and weight standards mandated by the Surface Transportation Act of 1982.[3] In addition, the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982 significantly eased the entry requirements into these industries increasing the need for improved safety regulations.[4]

The NARUC wholeheartedly endorses the State grants-in-aid program included in section 402 of the Surface Transportation Act and the Association is pleased that S. 1108 directs the Secretary of Transportation to take such actions as are necessary to carry out that program.

As the bill states in section 303, "interested State governments can provide valuable assistance to the Federal government in assuring that commercial motor vehicle operations are conducted safely and healthfully." We agree with the authors of this legislation that a motor carrier safety program of national proportions must involve the States as true partners in investigating and enforcing carrier safety requirements. Under the program mandated by the Surface Transportation Act, Federal matching funds of up to 80 percent of the States' total program costs are to be provided to States which have submitted a plan of enforcement to the DOT to implement the Federally-mandated safety standards.

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[1] *81st NARUC Annual Convention Proceedings*, pp. 178–185 (1969).

[2] 23 U.S.C. § 401.

[3] 49 U.S.C. § 2302.

[4] 94 Stat. 793 (1980) and 96 Stat. 1102 (1982), respectively.

S. 1108 would strengthen the Department of Transportation's (DOT's) interstate motor carrier enforcement authority, would require the DOT and the Interstate Commerce Commission to develop specific safety standards for new entrants into the motor carrier industry, and would establish an annual safety equipment inspection to be performed at the State level. The NARUC believes that these regulations combined with the commercial motor vehicle grants-in-aid program will provide an effective and comprehensive motor carrier safety initiative which will be responsive to the individual needs of each State.

Our main objection to Title III concerns the preemption of the States' authority to regulate intrastate transportation. By extending the coverage of the bill to commercial motor vehicles in or affecting interstate commerce, the measure will unfairly impinge on intrastate trucking traditionally regulated by the States. The States have maintained a highly effective record in enforcing intrastate motor carrier safety standards.[5] We strongly recommend that the committee preserve that effort by deleting the references to "affecting interstate commerce" contained in Sections 302 and 304 of the bill.[6]

The NARUC would also suggest that the Committee delete Section 312(b) of the bill, authorizing Federal preemption of State hours-of-service regulation, as another unnecessary intrusion into the exclusive regulatory jurisdiction of the States. The NARUC has consistently maintained that the effectiveness of any regulation should be determined by those State officals who are in the best position to assess the unique requirements of a particular locality. This Section substitutes the judgment of the Secretary for the judgment of those State officials in determining the local conditions which dictate the need for certain hours-of-service regulations.[7]

Section 307(a) of the legislation directs the Secretary to conduct any research or other activity which may be necessary to develop rules and regulations authorized by the proposed Act. We would suggest that the Committee consider establishing a National Motor Carrier Safety Advisory Committee within DOT to assist the Secretary in her efforts. This committee would be comprised of 20 members appointed by the Secretary, five of whom would be State commissioners, and would consider and advise the Secretary concerning the establishment of motor carrier safety standards, and training, research, and development programs which contribute to motor carrier safety programs.

We believe that the creation of this advisory panel would substantially benefit the implementation of the motor carrier safety program. A similar body, the Technical Pipeline Safety Standards Committee created under the Natural Gas Pipeline Safety Act, greatly contributed to the success of the pipeline safety grants-in-aid program. The panel we are proposing would provide a forum wherein experts in motor carrier safety regulation would be able to resolve program disruptions and potential conflicts. The inclusion of State commissioners would permit the Secretary to hear the views of those officials who are actually implementing and enforcing the Federal standards. We hope the members of the Committee will include such a provision.[8]

HAZARDOUS MATERIALS TRANSPORTATION GRANTS-IN-AID

Title IV of S. 1108 addresses the controversial problem of hazardous materials transportation. We feel that the bill establishes the best framework to encourage the prevention of transportation accidents by creating a grants-in-aid program similar to the commercial motor vehicle safety grants-in-aid program mentioned earlier.

The NARUC has long advocated the implementation of a hazardous materials transportation safety grants-in-aid program and proposed similar legislation in

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[5] See Appendices A and B for tables depicting the scope of State regulation of motor freight carriers.

[6] This amendment may be made to Section 302 of S. 1108 by deleting the words "or affecting" on line 16 of page 21.

This amendment may be made to Section 304(1) of S. 1108 by inserting a period after the word "State" on line 21 of page 22 and deleting the remainder of that paragraph.

This amendment may be made to Section 304(4) of S. 1108 by deleting "affecting commerce" on line 4 of page 24.

[7] This amendment may be made by deleting Section 312(b) of S. 1108 on page 39.

[8] Proposed statutory language to create a Motor Carrier Safety Advisory Committee is contained in Appendix C.

1981.[9] At that time, in a survey conducted by the NARUC, 21 of 30 responding State agencies supported the implementation of such a program. With over 250,000 hazardous materials shipments occurring every day on our Nation's highways, such a plan is long overdue.

Federal regulation of hazardous materials transportation, pursuant to the Hazardous Materials Transportation Act of 1975,[10] is under the jurisdiction of the DOT. However, State and local agencies also exercise regulatory authority over this type of transport within their respective jurisdictions. Unfortunately, there has been a lack of cooperation between Federal, State and local authorities in this area due, in part, to the lack of a grants-in-aid program. The original Act contains no provisions to permit willing States to monitor and enforce Federal hazardous materials regulations.

Our member commissions are aware of the advantages of this type of regulatory scheme as most participate in the rail and/or natural gas pipeline safety grants-in-aid programs.[11] The gas safety program has proved to be a model of Federal/State cooperation in its efficient implementation of interstate pipeline safety standards. It is our hope that the hazardous materials transportation safety grant program will achieve the same level of success.

A workable State/Federal program, as the one contemplated under S. 1108, requires that the Secretary promulgate minimum Federal safety regulations to be adopted and enforced by the States while leaving such areas as qualifications of inspectors, level of inspection effort and the expenditure of State and Federal monies to the discretion of the qualified State agencies designated to administer the program. According to the provisions of the bill, interested States would submit a plan to the Secretary whereby the State would agree to enforce Federal and consistent State rules and regulations. The Secretary is also authorized to reimburse the States up to 50 percent of the costs of the program.

Utilizing State resources and personnel in carrying out these grants-in-aid programs ensures that Federal safety standards are monitored and enforced in a skilled manner at only one half of the cost. During this period of fiscal restraint, such an arrangement is practical and efficient. More important, these programs are essential in protecting lives and preventing property damage.

In order to strengthen the opportunities for Federal/State and industry cooperation under this Title of the measure, we again recommend an amendment to create an advisory committee composed of Federal, State and local government officials as well as motor carrier and shipper representatives to aid the Secretary in developing the necessary standards and programs required under the bill.

In addition, to preserve the exclusive jurisdiction of the States to regulate intrastate hazardous materials transportation, the Association requests that the definition of commerce contained in the Hazardous Materials Transportation Act be amended, for the reasons described earlier.[12]

CONCLUSION

Mr. Chairman, we have emphasized throughout our testimony that the implementation of the commercial motor carrier and hazardous materials transportation grants-in-aid programs will aid the States in enforcing essential Federal safety standards, thereby enabling the Federal government to implement a comprehensive highway safety program. We further encourage the Committee to authorize the necessary funding to ensure full participation on both the Federal and State levels in these important programs.

The safety of our Nation's highways is of great concern to State regulators. We urge the Committee to approve this legislation, with the changes we have suggested. Thank you for your attention.

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[9] *93rd NARUC Annual Convention Proceedings*, pp. 818–826 (1981).

[10] U.S.C. § 1801.

[11] The natural gas pipeline safety grants-in-aid program, administered by DOT's Research and Special Program Administration, was authorized by Section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1674). The rail safety grants-in-aid program, administered by the Federal Railroad Administration, was authorized by Section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. § 435).

[12] This amendment may be made to S. 1108 by—

(1) inserting (a) after Section 404, and

(2) adding a new subsection (b) containing the following language:

"paragraph (1) of Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. § 1802) is amended by deleting clause (B) and inserting a period at the end of clause (A)."

APPENDIX A

Table 109 - NUMBER OF MOTOR FREIGHT CARRIERS UNDER AGENCY JURISDICTION

AGENCY	Motor Freight Carriers					
	Common Carriers			Contract Carriers		
	Number of Carriers	Number of Vehicles	Citation of Jurisdictional Authority	Number of Carriers	Number of Vehicles	Citation of Jurisdictional Authority
ICC 15/	14,183		49 U.S.C. 10521-10529	5,379		49 U.S.C. 10521-10529
ALABAMA PSC	339		Code of Ala., Chapter 37-3	114		Code of Ala., Chapter 37-3
ALASKA TC	200	6,438	A.S. 42.10	190	1,016	A.S. 42.10
ARIZONA CC	6,443 18/	145,000	ARS. 40-601, Rule R-14-5-303	153	3,896	ARS. 40-608, Rule R-14-5-304
ARKANSAS TC	2,100		Act 397 - 1955	300		Act 397 - 1955
CALIFORNIA PUC	9,600		Calif. P.U. Code 1063, 1063.1, 1063.5	17,791		Calif. P.U. Code 3541-5319
COLORADO PUC	4,648		Sec. 40-1-102 CRS 1973	1,419		Sec. 40-11-101 CRS 1973
CONNECTICUT DPUC	331 11/	213,027 6/		52 10/		
DELAWARE TA	0	0		0	0	
FLORIDA PSC	0	0		0	0	F.S. 323.04
GEORGIA PSC	1,753 8/	17,314 9/	Ga. Code, Ch. 68-6	198		Ga. Code, Ch. 68-5
HAWAII PUC	339	2,747	Ch. 271, HRS	29	160	
IDAHO PUC 23/	350		Ch. 6, Title 61, Idaho Code	20		Ch. 6, Title 61, Idaho Code
ILLINOIS CC	6,740		Ch. 95½, Ill. Rev. Stat., Sec. 18	1,044		Ch. 95½, Ill. Rev. Stat. Sec. 18
INDIANA PSC	755 1/		Ind. Code 1971, 8-2-7-1, 8-2-7-31	428 2/		Ind. Code 1971, 8-2-7-1
IOWA TRB	189 3/		Ch. 325, 327 Iowa Code, 1979			Ch. 327 Iowa Code, 1979
KANSAS SCC			Kan. State. Ann., Ch. 66			Kans. State. Ann., Ch. 66
KENTUCKY DOT (BVR)	30,900 12/	435,000 12/	KRS 281.600	140 10/		KRS 281.600
LOUISIANA PSC	354	12,461 4/	Constitutional and Statutory	127		Constitutional and Statutory
MAINE PUC	63	695	35 M.R.S.A., Ch. 93	375	1,350	35 M.R.S.A., Ch. 93
MARYLAND PSC	53	2,309	Article 78	23	525	Article 78
MASSACHUSETTS DPU			Mass. General Law 159B			Mass. General Law 159B
MICHIGAN PSC	3,625	15,331	Act 254, P.A. 1933, Amended	1,483	3,914	Act 254, P.A. 1933, Amended
MINNESOTA PUC	113		Minn. Stats. Ch. 221	2,376		Minn. Stats., Ch. 221
MISSISSIPPI PSC	237 24/			31		
MISSOURI PSC	1,229		Ch. 390 RSMo.	198		Ch. 390 RSMo.
MONTANA PSC			Title 69, MCA			Title 69, MCA
NEBRASKA PSC	949	5,518	75-301 *et seq.*			
NEVADA PSC	49		Nev. Revised Stats., Ch. 706	6		Nev. Revised Stats., Ch. 706
NEW HAMPSHIRE PUC	640	1,336	RSA 375-A and 375-B	950	1,074	RSA 375-B
NEW JERSEY DOT						
NEW MEXICO SCC	6,900	13/	N.M. Motor Carrier Act, (65-2-81) *et seq.*	36	13/	N.M. Motor Carrier Act (65-2-81) *et seq.*
NEW YORK DOT	1,583 14/		Trans. Law; Title 17, NYCRR	353		Trans. Law; Title 17, NYCRR
NORTH CAROLINA UC	585 21/		N.C. Gen. Stats., Ch. 62-3(23) a. 3, 4	151		N.C. Gen. Stats., Ch. 62-3(23) a. 3, 4
NORTH DAKOTA PSC	250	2,700	49-07-01 NDCC	35	140	49-07-01 NDCC
OHIO PUC	933 18/	84,740 19/	Title 49, Ohio Revised Code	726 20/	12,680 19/	Title 49, Ohio Revised Code
OKLAHOMA CC						
OREGON PUC 5/	438 10/	17,766		126 10/	1,383	
PENNSYLVANIA PUC	2,688		Pa. Public Utility Law	331		Pa. Public Utility Law
PUERTO RICO PSC	7,056	10,167				
RHODE ISLAND PUC	926	2,000	Title 39, Ch. 12, Secs. 1-44	14	300	Title 39, Ch. 12, Sec.9 R.I.G.L.
SOUTH CAROLINA PSC	813	9,083		165	1,263	S.C. Code Ann., Sec. 58-23-10 *et seq.* 1976, Amended
SOUTH DAKOTA PUC	947 10/	3,118	S.D. C.L. 49-28	96	995	S.D. C.L. 49-28
TENNESSEE PSC	5,032 6/		65-1501 *et seq.*			
TEXAS RC	1,863 22/	84,874	Tex. Rev. Civil Stat. Ann., Art. 911b	261	4,715	Tex. Rev. Civil Stat. Ann., Art. 911b
UTAH PSC	4,901 6/		Utah Code, Sec. 54-6-4	6/		Utah Code, Sec. 54-6-8
VERMONT AT 17/	14		Title 30, VSA Sec. 203			
VIRGIN ISLANDS PSC						
VIRGINIA SCC	22	10.000	Va. Code, Title 56, Ch. 12	6,900	20,000	Va. Code, Title 56, Ch. 12
WASHINGTON UTC	9,496		Title 81, Rev. Code of Wash.	209		Title 81, Rev. Code of Wash.
WEST VIRGINIA PSC	996 6/	2,016	Ch. 24-A, W. Va. Code	480	970	
WISCONSIN TC	216 7/		Wisc. Statutes, Ch. 194	22,237 7/		Wisc. Statutes, Ch. 194
WYOMING PSC	47		Sec. 37-8-201, Wyo. Stats., 1977	1,980		Sec. 37-8-108, Wyo. Stats. 1977

1/ Intrastate only: Interstate = 58,000, approximate.
2/ Intrastate only: Interstate = 3,000, approximate.
3/ Includes liquid carriers. Does not include 10,000 irregular route truck operators.
4/ This figure includes all intrastate vehicles, both freight and passenger.
5/ An additional 2,839 carriers transporting logs, sand and gravel subject to entry and safety regulation.
6/ Total number motor freight carriers (common and contract).
7/ Motor carriers.
8/ Intrastate. In addition approximately 17,000 additional carriers, both regulated and exempt, operating in excess of 320,000 vehicles solely in interstate operations which must register authority vehicles and comply with insurance requirements and safety regulations.
9/ Figure includes motor freight common and contract carriers, and motor passenger common carriers -- breakdown unknown.
10/ Intrastate only.
11/ Intrastate only. In addition 6,928 interstate (ICC regulated).
12/ Total for-hire motor carriers, common and contract; and private carriers for purposes of motor fuel tax.
13/ Number of vehicles reported to Motor Transportation Department.
14/ Includes New York City household goods movers.
15/ Reporting for both Common Carriers and Contract Carriers is limited to Class I and Class II motor carriers of property, effective 1/1/80. This requirement is new for approximately 3,100 Class I and Class II carriers.
16/ Intrastate and interstate property carriers.
17/ Vermont Agency of Transportation, State Administration Building. Montpelier, Vermont 05602.
18/ Intrastate only; interstate registered - 3,780.
19/ Intrastate only; interstate registered - unknown.
20/ Intrastate only; interstate registered - 2,001.
21/ Includes 24 carriers which held both common and contract carrier authority and 4 rail motor freight carriers.
22/ Intrastate only; interstate registered and exempt - 9,771.
23/ Idaho deregulated carriers of livestock, sand, gravel and aggregates thereof, agricultural products and livestock feed on 1 July 1982, by exempting those commodities from the Idaho Motor Carrier Act.
24/ 4,276 interstate common and contract carriers.

Source: 1981 Annual Report on Utility and Carrier Regulation, National Association of Regulatory Utility Commissioners (Washington, D.C., 1982).

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APPENDIX B

Table 108 - REGULATION OF MOTOR FREIGHT CARRIERS

AGENCY	Scope of Agency regulation of motor freight carriers -																							
	Common Carriers												Contract Carriers											
	Entry	Operating Territory	Abandonment	Rates	Accounting	Service	Safety	Security Issues	Mergers and Acquisitions	Insurance	Reporting	Interstate Motor Freight Carrier Registration	Entry	Operating Territory	Abandonment	Rates	Accounting	Service	Safety	Security Issues	Mergers and Acquisitions	Insurance	Reporting	Interstate Motor Freight Carrier Registration
ICC	X	X	X	X	X	X		X	X	X	X		X	X	X	X	X	X		X	X	X	X	
ALABAMA PSC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
ALASKA TC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
ARIZONA CC 16/	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X
ARKANSAS TC	X	X	X	X		X	X		X	X	X	X	X	X	X	X		X	X		X	X	X	X
CALIFORNIA PUC	X	X	X	X	X	X		X	X	X	X	X	X	X		X	X				X	X	X	X
COLORADO PUC	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		X	X	X	X	X	X
CONNECTICUT DPUC	X	X	X	X	X	X	6/		X	X	X1/	X	X	X	X	X	X	X	6/		X	X	X1/	X
DELAWARE TA																								
FLORIDA PSC 9/																								
GEORGIA PSC	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
HAWAII PUC	X	X	X	X	X	X	10/		X	X	X	X	X	X	X	X	X	X	10/		X	X	X	X
IDAHO PUC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
ILLINOIS CC	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X			X	X	X	X
INDIANA PSC	X	X	X	X	X	X	X		X	X	X	X	X						X			X		X
IOWA TRB	X2/	X2/	X	X2/	X	X2/	X		X	X2/	X	X							X			X		X
KANSAS SCC	X	X	X	X	X	X	X		X	X	X1/	X	X	X	X	X	X	X	X		X	X		X
KENTUCKY DOT (BUR)	X	X	X	X	X	X	X		X	X	X1/	X	X	X	X	X	X	X	X		X	X		X
LOUISIANA PSC	X	X	X	X	X	X		X	X	X	X	X	X	X		X	X	X		X	X	X	X	X
MAINE PUC	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		X		X	X	X	X
MARYLAND PSC 3/	X	X	X	X	X	X	X	X	X	X3/	X		X	X	X	X	X	X	X	X	X	X3/	X	
MASSACHUSETTS DPU 11/	X	X	X	X	X	X	X	X	X	X8/	X1/	X	X	X	X	X	X	X	X	X	X	X8/	X1/	X
MICHIGAN PSC	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
MINNESOTA DOT				13/	X	X	X			X	X	X				13/	X	X	X			X	X	X
MINNESOTA PUC	X	X	X						X				X	X	X						X			
MISSISSIPPI PSC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
MISSOURI PSC	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		X
MONTANA PSC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	4/	X	X	X		X	X	X	X
NEBRASKA PSC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
NEVADA PSC	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
NEW HAMPSHIRE PUC	X	X	X	X7/					X	X8/		X	X	X		X7/					X	X8/		X
NEW JERSEY DOT																								
NEW MEXICO SCC	X	X	X	X		X				X		X	X	X	X	X		X				X		X
NEW YORK DOT	X	X	X	X	X	X	X		X	X	X		X	X	X	X	X	X	X		X	X	X	
NORTH CAROLINA UC	X	X	X	X	X	X	X	X	X	X	X1/	X	X	X	X	X	X	X	X	X	X	X	X1/	X
NORTH DAKOTA PSC	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X4/	X	X	X	X	X	X	X	X
OHIO PUC	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X
OKLAHOMA CC	X	X	X	X	X	X			X	X		X	X	X	X	X	X				X	X		X
OREGON PUC	X	X	X	X	X	X	X		14/	X	X	X	X	X	X	X	X	X	X		14/	X	X	X
PENNSYLVANIA PUC	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	
PUERTO RICO PSC	X	X	X	X	X	X	X	X		X	X		X	X	X	X	X	X	X	X		X	X	
RHODE ISLAND PUC	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
SOUTH CAROLINA PSC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
SOUTH DAKOTA PUC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
TENNESSEE PSC	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
TEXAS RC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
UTAH PSC	X	X	X	X	X	X	15/		X	X	X	X	X	X	X		X	X	15/		X	X	X	X
VERMONT AT 2/12/	1/	X	X	X	X	X	X	5/	X															
VIRGIN ISLANDS PSC																								
VIRGINIA SCC	X	X	X	X		X		X	X	X		X	X	X				X				X		X
WASHINGTON UTC	X	X	X	X	X	X	X	X5/	X	X	X	X	X	X	X	X	X	X	X	X5/	X	X	X	X
WEST VIRGINIA PSC	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
WISCONSIN TC	X	X	X	X	X	X				X	X	X	X	X	X	X	X	X				X		X
WYOMING PSC	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X			X			X		X

1/ Annual reports are required to be filed showing intrastate operations.
2/ Regular route carriers of general commodities including common and contract flammable carriers.
3/ Flammable tank truck carriers only.
4/ Contract (charter) carrier rates filed with the PSC. PSC prescribes minimum rates upon petition.
5/ No jurisdiction if securities subject to ICC regulation.
6/ Under jurisdiction of Connecticut Motor Vehicle Department.
7/ Requires filing only.
8/ Cargo only.
9/ Regulatory authority repealed by Ch. 76-168, as amended by Ch. 77-457, Laws of Florida.
10/ Function of Department of Transportation, Office of Highway Safety Coordinator.
11/ Commercial Motor Vehicle Division; intrastate operations only.
12/ Vermont Agency of Transportation, State Administration Building, Montpelier, Vermont [illegible].
13/ All rates filed with Minnesota DOT.
14/ Oregon PUC has jurisdiction only with respect to merging of carriers possessing no interstate operating authority. Mergers approved by the ICC are accepted by Oregon without additional filing. Application to the PUC must be made for acquisition of non-incorporated carriers.
15/ Under jurisdiction of Utah State Department of Transportation.
16/ Total deregulation of for-hire motor carriers effective 7/1/82.

Source: 1981 Annual Report on Utility and Carrier Regulation, National Association of Regulatory Utility Commissioners (Washington, D.C., 1982).

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APPENDIX C

This amendment may be made to S. 1108 by adding a new subsection (c) to Section 307 containing the following language:

> "(c) There is established in the Department of Transportation a National Motor Carrier Safety Advisory Committee, composed of the Secretary or an officer of the Department designated by the Secretary, who shall be Chairman, the Federal Highway Administrator, and 20 members appointed by the Secretary, five of whom shall be State commissioners nominated by the national organization of the State commissions. (49 U.S.C. §11506) The remainder of the appointed members, having due regard for the purposes of this subsection, shall be selected from among representatives of public and private interests, contributing to, affected by, or concerned with the conduct of motor carrier safety programs, including national organizations of motor carrier vehicle manufacturers, owners, and operators, as well as research scientists and other individuals who are expert in this field. Members of the Committee who are not officers or employees of the United States shall, while attenting meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 4703 of title 5, United States Code, for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.
>
> "The National Motor Carrier Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department relative to the conduct of motor carrier safety programs. The Committee is authorized (1) to review training, research or development projects or programs submitted to or recommended by it relative to the conduct of motor carrier safety programs and recommend to the Secretary any such projects which it believes show promise of making valuable contributions to the strengthening of such motor carrier safety programs in the public interest; and (2) to review, prior to issuance, regulations and standards proposed to be issued by order of the Secretary under the provisions of this Act and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

"The National Motor Carrier Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

"(b) The Secretary shall provide such staff and facilities to the National Motor Carrier Safety Advisory Committee from among the personnel and facilities of the Department of Transportation as are necessary to carry out the functions of such Committee.

"(c) The Secretary is authorized and directed to assist, cooperate and consult with other Federal departments and agencies, State and local governments, private industry, the national organization of the State commissions, and other interested parties, in order to carry out the provisions of this section."

Senator **Danforth**. Thank you very much.
Mr. Shafroth.

STATEMENT OF FRANK SHAFROTH, REPRESENTING THE HAZARDOUS MATERIALS TRANSPORTATION COALITION, ACCOMPANIED BY CLIFF HARVISON, MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS ASSOCIATION

Mr. **Shafroth**. Good morning, Mr. Chairman.

My name is Frank Shafroth. I am counsel for the Office of Federal Relations with the National League of Cities, appearing this morning with Cliff Harvison, who is the managing director of the National Tank Truck Carriers Association. He will be speaking in his individual capacity in the next panel, so he is merely here to answer your questions this morning.

We are both speaking on behalf of the Hazardous Materials Coalition, which includes at this point in time the American Petroleum Institute, the American Trucking Association, the Chemical Manufacturers Association, Hazardous Materials Advisory Council, the National Agricultural Chemicals Association, National Association of Counties, the National Governors Association highway safety representatives, the National Association of Towns and Townships, the National Conference of State Legislatures, the National Governors' Association, the National Industrial Traffic League, the National League of Cities, the National LP Gas Association, the National Paint and Coatings Association, the National Tank Truck Carriers, the Society of the Plastics Industry, the Synthetic Organic Chemical Manufacturers Association, and the U.S. Conference of Mayors.

The coalition came together, really starting in this room, approximately 2 years ago, Mr. Chairman, when this committee was last considering the reauthorization of the HMTA. At that point in time, the industry members and the State and local representatives refused to meet with each other, and met individually with both minority and majority staff of this committee in attempting to work out some agreement.

Failing that, stalemate led to really the death of the reauthorization in December 1981. We recognized subsequently there was unlikely to be any improvement in the program, and what we felt were mutual problems, unless we made those agreements ourselves. Therefore, we have been meeting at the offices of the National League of Cities now for 1½ years.

What I would like to do at this point is outline what we believe are the concepts of a program which we could all support. Our coalition has reached a general consensus on the following concept areas.

First, uniformity. We believe there must be a Federal, State, local regulatory scheme of the transportation of hazardous materials. Matters pertaining to technical areas such as container tank construction, vehicle placarding, package marking and labeling, shipping papers and hazardous materials definitions should be left strictly to the province of the Federal Government for regulation promulgation.

Uniquely local situations involving routing, prenotification, curfews, and bans which may require a State or local regulatory approach should follow uniform performance standards established by the Department of Transportation.

Two, enforcement. Enforcement of regulations governing tank and container construction should be the sole responsibility of the Federal Government, while the responsibility for enforcing the other Federal hazardous materials regulations should be shared by the Federal Government and State and local authorities.

Three, emergency response. The coalition recognizes a need for strong coordination and total involvement of all parties in emergency response. The subcommittee has expressed apprehension about the plethora of parties which would and should be involved in emergency response from both the public and private sector. Leadership, centralization of authority, conflicting jurisdictional roles, poor communication, and inadequate education, training, and capacity are all elements of the problem from our perspective.

The coalition supports additional funding to improve emergency response utilizing expertise of industry, State, and local officials.

Four, financing. All of the above requires funding. However, the coalition is in agreement that rather than tapping general Federal revenues, it should be funded through a trust fund raised by fees assessed on the affected industry.

In the area of enforcement, the highway trust fund moneys, as the Department testified earlier this morning, should be directed to the States to finance hazardous materials highway enforcement programs.

Since emergency response is intermodal, the coalition believes a new fund constructed with fees assessed on the affected hazardous materials industry should be established for the training and/or equipping of State and local emergency response personnel. If such fees are enacted, participating State and local governments would be precluded from levying State or local hazardous materials related fees.

The coalition recommends the establishment of a quality assurance procedure by which all training programs may be evaluated to insure effective and up to date procedures and techniques. Only those programs which have been certified would be eligible to receive financial assistance from the emergency response trust fund.

Finally, your legislation, S. 1108, mandates a study of prenotification requirements. The coalition believes the study should be expanded into a general assessment of information requirements. Federal, State, and local governments currently require that shippers and carriers of hazardous materials provide a variety of information on their transactions. Such information may be required by State and local governments for registration, licensing, prenotification of shipments, or accident reporting.

We recommend the U.S. Department of Transportation undertake an assessment of current information collection practices to determine the utility of collecting such information, which level of government should bear the primary responsibility for data gathering and whether such information might be collected in a more uniform fashion.

Although we have only outlined concept points this morning, our coalition is in the final stages of putting together recommended statutory language. It will address the key elements covered by title IV of your legislation, and we ask your indulgence so that we can come back to you after a short period with our legislative recommendations.

In looking back, it has been a long road for us, hard and torturous. Today, as you will no doubt hear, there are those on both sides who disagree with what we have done and what we intend to do. The length of the road we have already come, however, increases our desire to reach the end together.

[The statement follows:]

STATEMENT OF FRANK SHAFROTH, LEGISLATIVE COUNSEL, NATIONAL LEAGUE OF CITIES ON BEHALF OF HAZARDOUS MATERIALS TRANSPORTATION COALITION

Good morning. My name is Frank Shafroth. I am a counsel for the National League of Cities.

I am testifying this morning not as a representative of NLC, but as a representative for the public interest group representatives of the Hazardous Materials Transportation Coalition.

Our coalition is unique. It might be said that it began in this room nearly two years ago. At that time, frustrations at growing state and local impediments to the transportation of hazardous and nuclear materials led this committee to consider the concept of a broad federal preemption of the right of states and local governments to regulate the commerce of these materials through their jurisdictions.

This effort was considered at a time of uncertainty. In the Spring of 1981, the administration called for a federal-state-local partnership to assure the most efficient and effective implementation of economic recovery and public safety. The U.S. Department of Transportation was proposing to assume a leadership role in encouraging more uniform standards, assisting states and local governments to be able to enforce these standards, and to be able to respond in the event of an emergency. This committee concurred. The report, S. Rept. 97-99, clarified its view of the need to formalize development of a greater state and local role in support of the partnership concepts as part of a prime federal role.

Yet, rather than assuming that lead role, the Department experienced severe reductions in its own budget. Not only was its support of S. 960 called into question, but it was increasingly clear that at its personnel levels, the Department could never have implemented such ambitious goals.

From both the state and local, and from the industry perspective, there was a growing perception that the Department was unable to carry out its leadership role as contemplated by the Congress. With over 720 billion ton-miles of hazardous materials shipped annually, much of it over badly deteriorating highways—before any prospect of the gas tax legislation—we all felt it critical that an effective program be in place.

Indeed, it was in the perceived absence of a strong Federal role that cities, counties, and States took it upon themselves to reduce risks in their communities. They believed that without effective Federal enforcement, the surest path to human health and safety was simply to deter any commerce of hazardous materials within their jurisdiction.

During the Fall of 1981, it would perhaps be most descriptive to describe the public-industry relationship as one of armed silence. Discussions and later negotiations with your committee staff took place without direct confrontation. That stalemate, of course, precluded any broad support for the reauthorization of the HMTA.

It was this stalemate which was the genesis of the formation of the coalition. From our discussions, two mutual problems became apparent. First, the situation confronting each of us was unlikely to change until we agreed upon a change. Second, we, in fact, shared a number of perceptions and goals with regard to improving the current system.

Beginning in January, 1982, we commenced meetings which have continued ever since at NLC on at least a monthly basis. As a foundation, there was agreement that the system would be safer and more efficient with greater uniformity. Likewise, there was agreement that users should play a role in assuring a much better State and local capacity in enforcement and emergency response.

We commenced, then, by constructing a matrix of problems, perceptions, and objectives from the Federal, State, local, and industry perspective.

Our first agreement and action as a coalition, was to preseve the existing Federal role. In the face of severe reductions requested by OMB of the Research and Special Programs Administration, we made a joint, concerted effort. On May 18, 1982 the coalition met with former Secretary Lewis to seek a reversal of the proposed reductions.

At that meeting, the coalition sought the support of the administration for our unique efforts. We requested full funding during the transition period to enable us to propose a new program in which proposed new enforcement and emergency response programs would not be funded from general revenues. We promised to work toward the goals and objectives of a Federal-State-local partnership. With the assistance of this committee, we were successful. The OMB position was overruled, and the Department has become a more active contributor to the success of our efforts.

At this time, to facilitate efforts, the coalition set up subcommittees for its highest priorities: Uniformity, Finance, Education and Training and Emergency Response.

By this time, our coalition membership included: the American Petroleum Institute, American Trucking Associations, Inc., Chemical Manufacturers Association, Hazardous Materials Advisory Council; National Agricultural Chemicals Association, National Association of Counties, National Association of Governors' Highway Safety Representatives, National Association of Towns and Townships, National Conference of State Legislatures, National Governors Association, The National Industrial Traffic League, National League of Cities, National LP-Gas Association, National Paint & Coating Association, Inc., National Tank Truck Carriers, Inc., The Society of the Plastics Industry, Synthetic Organic Chemical Manufacturers Association and U.S. Conference of Mayors.

Although not each and every organization represented has been able to approve our specific positions, the consensus is strong.

To see if our efforts on behalf of our many organizations were representative, the coalition held a meeting in September, last year, to involve a broad spectrum of our principals. The intent was to determine if our emerging ideas were acceptable, and whether we had a mandate to continue.

The conference was a success. While it is a general rule that concepts and ideas developed in Washington are illsuited elsewhere, this time it appeared the coalition's ideas and suggestions had widespread support.

It was with that mandate that we returned.

Now I would like to outline where we are and where we are going. One important caveat is that our emphasis has been on highway transportation, and, with the exception of the emergency response proposals which are inter-modal, we are not recommending any legislative initiatives except those that apply to the highway transportation of hazardous materials. Our coalition has reached general consensus on the following concept areas:

1. *Uniformity.*—There must be a federal-state-local regulatory scheme for the transportation of hazardous materials. Matters pertaining to "technical" areas such as container and tank construction, vehicle placarding, package marking and labeling, shipping papers, and hazardous materials definition should be left to the province of the federal government for regulation promulgation. Uniquely local situations involving routing, prenotification, curfews and bans which may require a state or local regulatory approach should follow uniform performance standards established by DOT.

2. *Enforcement.*—The enforcement of regulations governing tank and container construction should be the sole responsibility of the federal government, while the responsibility for enforcing the other federal hazardous materials regulations should be shared by the federal government and state and local authorities.

3. *Emergency response.*—The coalition recognizes a need for strong coordination and total involvement of all parties in emergency response. The subcommittee has expressed apprehension about the plethora of parties which would and should be involved in emergency response from both the public and private sector. Leadership, centralization of authority, conflicting jurisdictional roles, poor communication, and inadequate education, training, and capacity all are elements of the problem. The coalition supports additional funding to improve emergency response utilizing expertise of industry, state and local officials.

4. *Financing.*—All of the above requires money; however, the coalition is in agreement that rather than tapping general revenues, it should be funded through a trust fund raised by fees assessed on the affected industry. In the area of enforcement, Highway Trust Fund monies should be directed to the states to finance hazardous materials highway enforcement programs. Since emergency response is intermodal the coalition believes a new fund constructed with fees assessed on the affected hazardous materials industry should be established for the training and/or equipping of state and local emergency response personnel. If such fees are enacted, participating state and local governments would be precluded from levying state or local hazardous materials related fees.

The coalition recommends the establishment of a quality assurance procedure by which all training programs may be evaluated to ensure effective and up to date procedures and techniques. Only those programs which have been certified would be eligible to receive financial assistance from the emergency response trust fund.

Finally, S. 1108, as you know, mandates a study of prenotification requirements. The coalition believes the study should be expanded into a general assessment of information requirements. Federal, state and local governments currently require that shippers and carriers of hazardous materials provide a variety of information on their transactions. Such information may be required by state and local governments for registration, licensing, prenotification of shipments or accident reporting. We recommend that U.S. DOT undertake an assessment of current information collection practices to determine: the utility of collecting such information, which level of government should bear primary responsibility for data gathering and whether such information might be collected in a more uniform fashion.

Although we have outlined only concept points here today, our coalition is hard at work putting the finishing touches on recommended legislative language. It will address the key elements covered by Title IV of S. 1108 and we ask your indulgence so we can come back to you shortly with our legislative recommendations. Together we believe that we can develop a package which will be acceptable to all major constituent groups—DOT, state and local governments and affected industry members.

In looking back, it has been a long road—scarred and tortuous. Today, as you will no doubt hear, there are those on both sides who disagree with what we have done and what we intend to do. The length of the road we have already come, however, increases our desire to reach the end—together.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question 1. The Hazardous Materials Coalition has been working on certain proposals dealing with hazardous materials regulation, enforcement and emergency response. There has been some discussion of excepting the rail industry from certain legislative proposals in these areas. What is the reaction of the Coalition to such a suggestion? To what extent have the efforts of the Coalition been focused on issues which involve the entire gamut of hazardous materials transportation as well as those which relate principally to the highway mode?

Answer. The Hazardous Materials Coalition believes that legislative proposals on hazardous materials transportation enforcement should apply to highway transportation. The Coalition believes, however, that emergency response must be multimodel. Incidents and accidents requiring emergency response have been experienced in each and every transportation mode. Any proposal to exclude one mode from a legislative effort to develop a comprehensive emergency response program would be viewed by the coalition as self-defeating.

Question 2. The Coalition has focused on the key concern of financing enforcement and emergency response efforts. As a source of funds, its discussions have focused on a registration system. How would the various levels of government be involved in this system? How would such a system involve the various stages in a hazardous materials movement—that is, the originator of the material, the container manufacturer, the carrier, and the recipient of the material? Would the risks associated with the movement of hazardous materials be spread equally in providing the necessary funds?

Answer. The Coalition has focused on separate sources of non-general revenue funding to meet enforcement and emergency response needs. For enforcement, the coalition has focused on the federal Highway Trust Fund. For emergency response, the coalition has focused on a registration system.

In terms of collection, the coalition intends the federal government to assume the lead role, as it currently does with the Highway Trust Fund.

For the registration system, the Coalition is focusing on a recommendation that the Secretary develop registration fees by regulation after a 24 month period. The coalition intends that such fees be based upon the risk associated with the registrant.

Question 3. The states and localities continue to be concerned about the need for access to hazardous materials information necessary for them to make decisions about the allocation of enforcement and response resources. To what extent would a registration system respond to this concern? What other proposals has the Coalition considered with respect to this concern and improving the current information collection system?

Answer. As proposed by the Coalition, the registration system would do little in terms of providing hazardous materials information useful for determining the allocation of enforcement and response resources. The Coalition has considered and recommends that the Secretary provide Congress with an information assessment and requirements report, including recommendations as to how such information should be collected and how such information gathering might be improved and made more efficient. The Coalition also recommends that the Secretary provide a report determining hazardous transportation flows, to be updated annually.

Question 4. Coalition members have testified to possible legislation clarifying Federal, state and local roles in hazardous materials regulation. In particular, mention has been made of a procedure and forum for resolving differences among the various parties, particularly with respect to "operational" standards. How would you envision such a forum as compared to the current consistency determination made by the Department of Transportation pursuant to the Hazardous Materials Transportation Act? How would you envision the state and local input into this regulatory process?

Answer. The Coalition envisions two changes to improve the current practices with regard to "operational" standards. First, by encouraging the creation of state and local coalitions, the Coalition believes that there will be a significant reduction in controversy between the public and private sector with regard to operational restrictions. Our experience just since the Coalition's beginning appears to confirm this expectation.

Secondly, the Coalition has recommended the promulgation of performance standards for "operational" standards. For the first time, such standards will provide certainty to a state or local government as to what flexibility was available to set operating restrictions. Instead of a process of consistency determinations and litigation to determine state or local authority, the Coalition envisions that these performance standards would create a process and framework within which state and local governments could legally act.

Question 5. With respect to emergency response, the Federal Emergency Management Agency has testified that it plans to expand its activities to more definitively include hazardous materials. How would the Coalition envision this agency's responsibilities in this area, and particularly with respect to Coalition proposals on emergency response?

Answer. The Coalition has discussed the Federal Emergency Management Agency's role in emergency response. The Coalition has not envisioned any role for FEMA. If there would be any role, the Coalition believes FEMA should act under the coordination of DOT to assist in certifying emergency training programs.

Senator DANFORTH. Gentlemen, thank you very much.

Of course, if you have any additional views or information to give us, we are most willing to receive them. I think it is obvious on the whole question of tranporting hazardous material that there is and has been from the outset an underlying question as to what is the relative role of the Federal Government versus State and local governments, and all three of you have testified in that regard. We have attempted to address that issue in this portion of the bill with respect to routing, with respect to prenotification, and with respect to training, both of the enforcement and response. The theory of the bill is that under present law, the Hazardous Material Transportation Act of 1974, there is a preemption of State regulation.

The question is whether or not in exercising its preemptive responsibility, the Federal Government should provide a specific role for State and local governments in establishing routing, and the answer we have in this bill is yes, that there has to be an effort to work this out with State and local governments.

With respect to prenotification, it is our belief that DOT should have authority to establish prenotification requirements so the State government and local government will know what is coming through, what is going on.

And with respect to training and enforcement, again, it is our view in putting this legislation together, and, I think, the view of Congress, that basically enforcement is going to be and should be a matter of State responsibility and local responsibility, and not Federal responsibility. But in order to do the job, State people and local people have to have funds to carry out that responsiblity. My understanding of the testimony of all three of you, and correct me if I am wrong, is that you are in basic agreement with those thrusts of this section. Is that correct?

Mr. **Dority**. That is correct.

Senator **Danforth** Wherein have we gone wrong, if we have gone wrong, with respect to these concerns in this bill? What additional recommendations would you make to us?

Mr. **Kamprad**. Are you directing the question to me?

Senator **Danforth**. To all three of you.

Mr. **Kamprad**. In the wording of the bill, it states, the Secretary may do these following things. It does not say the Secretary shall, in the first paragraph 3. In the interest of uniformity, this bill provides or preempts any State or local government regulation in hazardous materials shipment, so if the Secretary chose not to do what he could do, we are out in the dark.

Senator **Danforth**. That is, you think he should be affirmatively required to bring in State and local governments. Is that it?

Mr. **Kamprad**. I believe that is what I am getting at. The requirement should be stressed that the local responding organization to a serious incident be notified of this type of shipment going to his community in advance, so he can prepare for the handling of the incident.

Senator **Danforth**. Mr. Dority.

Mr. **Dority**. I think, Senator, as I mentioned in my remarks, that perhaps we would desire to have it firmed up to some extent, as when the Secretary is in the process of promulgating any of the rules or regulations that they tap our resources in the form of an advisory panel of not only State commissioners but other interested parties that could assist in not only the implementation but also the drafting perhaps of such rules.

Senator **Danforth**. Mr. Shafroth.

Mr. **Shafroth**. I think an important area that we feel should be emphasized, Mr. Chairman, is the funding. While your bill talks about additional funding to meet some of those emergency response and enforcement needs, I know that one of our side efforts in the past years, one that you and Senator Gorton helped us with last year, was just saving the existing level of funding for hazardous materials programs at the Department of Transportation.

We met with former Secretary Lewis a year ago to try to get him to appeal directly to the President to reverse OMB's reductions.

The current level of funding, we believe, is inadequate in both enforcement and emergency response, but this summer the House has already reduced that funding level once again. It was only yesterday that the Subcommittee on the Senate Appropriations Committee brought it back to the current level. That is why we feel, and the coalition has agreed, and promised to Secretary Lewis that we would find some source of funding outside of general Federal revenues.

Senator **Danforth**. Let me ask you, at the present time, what is the capacity of State and local governments both to respond to an emergency and to enforce transportation of hazardous materials laws? Are they adequately funded to do that? Do they have adequate trained manpower to do that?

Mr. **Shafroth**. There is no even answer on both fronts, Senator. I think clearly most cities and States would feel that especially at the State level right now, they are inadequately funded. On a city by city basis, there has been a series of accidents over a number of years. Clearly, that creates a better political framework to provide more funding for the program, and there are better programs in those cities.

Also, this tends to be especially the case where industries reside within such a city and contribute to response programs—Philadelphia is a very good example—as compared to, say, New York City or Washington. So there is an inconsistent level on the issue of enforcement that is even more troublesome because what the Federal preemption is is being set now mostly by U.S. district and circuit courts. I have talked to very few city attorneys who have any idea exactly what they may or may not do in the area of passing their own city ordinances and enforcing them.

Senator **Danforth**. Mr. Dority.

Mr. **Dority**. Sir, I think, as I mentioned earlier, the Missouri Commission is involved right now with the Department of Transportation in pursuing the contract under their hazardous materials enforcement development program. We are just now getting into the negotiation of what that contract will entail. We have a proposal that has been accepted by the DOT, it is my understanding, but in reviewing it, it would appear that only 25 percent of the money will be provided by the DOT, and I think your legislation perhaps would look at a 50-percent level of funding.

Senator **Danforth**. But what is the present capability in the State of Missouri or in communities within the State of Missouri for enforcement?

Mr. **Dority**. I think we have pretty good capabilities at this time at the PSC with 19 people. You can certainly argue there should be more out on the road. However, the responsibility is divided among various State agencies in the State. Besides the PSC, we have the department of natural resources, the State highway patrol, the division of health, and some others, and so I would not want to speak on their behalf. We are doing everything we can that is available to us to try to help our situation, but I cannot sit here and tell you that we feel we are up to full strength or where we should be at this point in time.

Senator **Danforth**. Chief.

Mr. **Kamprad**. Well, as far as St. Louis is concerned, and that is my background and experience, we were very fortunate in handling any type of hazardous material problem, and having the home offices of both Monsanto Chemical and another chemical company available, and they cooperated with us 100 percent, and gave us tremendous assistance.

I do see the need existing for greater comprehensive training to bring this training and make it available to the communities throughout our country. We cannot make experts out of every fire chief on hazardous materials, but to get a handle on this thing, we need more training facilities provided to these people.

Senator **Danforth**. Gentlemen, thank you very much.

Next we have Mr. Richard Briggs, Association of American Railroads, Mr. William Johns, American Trucking Associations, Inc., Mr. Charles Mayer from the Nuclear Transportation Division, Tri-State Motor Transit Co.

STATEMENT OF RICHARD E. BRIGGS, EXECUTIVE VICE PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, ACCOMPANIED BY HOLLIS G. DUENSING, GENERAL SOLICITOR

Mr. **Briggs**. Thank you.

The railroad industry appreciates the opportunity to come here and comment on the proposed amendments to the Hazardous Materials Transportation Act. It is obvious that the proposals spring from a concern that the existing act does not adequately address the desire for a safer hazardous materials transportation system. It calls for a number of additional regulatory schemes to improve that.

But while we believe that these changes may have salutary effects on other modes of transportation, we do not believe they are appropriate in their application to the railroad industry and we more strongly believe that they would not lead to a safer rail system for the transportation of hazardous materials.

Let me basically sketch out the background in recent years of hazardous transportation by rail. We move about a million carloads of hazardous material a year. Last year we had 63 releases from accidents involving either tankcars or accidents that led to releases from tankcars. So what we are talking about is seven one-thousandths of 1 percent.

Looking briefly at the accident levels in the railroad industry, since 1978 we find that the number of reported train accidents to the Federal Railroad Administration has dropped 60 percent. The number of injuries in train accidents has dropped 79 percent. The number of train accident fatalities has dropped 77 percent.

Looking specifically at train accidents with hazardous material release, we see a decline in the number of accidents by 61 percent and a 95-percent decline in injuries. We have not had a fatality in 2 years and only two in the last 4 years.

Looking at other sources of data, we find that injuries, based on Materials Transportation Bureau data, are down 92 percent. Last year, 1982, was obviously a good year, but the trend in all of these areas is steadily downward.

This did not come about by accident. Since the midseventies, the railroads have been involved in the largest track rebuilding program in the past three decades. Beginning in 1970 we launched, in cooperation with the Federal Government and railroad suppliers, the largest privately financed freight safety research program in history. That led to a tankcar which now has improved couplers, head shields, and greater thermal protection.

We initiated a 10-year program to improve train handling called the track-train dynamics program, which has led to marked improvements in the way we arrange and move trains. We have joined with a number of chemical manufacturers, first on a temporary task force basis, to expedite a program designed to improve training with local fire officials and other emergency response groups, and then in a permanent group dedicated to improving accident prevention, emergency response, and the information available.

There are a number of other areas cited in my more detailed testimony that I could go into, but suffice it to say that we think we have made major progress working with the Department of Transportation, the Federal Rail Administration, the local authorities involved, the manufacturers of chemicals and shippers and receivers of chemicals. There has been a most creditable record at this time.

Let me speak specifically to some of the proposals and explain our reservations about those proposals. The existing regulations that are applicable have not to us presented any problems. We are somewhat different in many respects than the trucking industry, but we do not have a specific problem with a lack of operators, not meeting the full-fledged safety requirements, or in equipment.

We move the goods, not generally in trains that are totally made up of hazardous materials, but with a few cars in a mixed train, so that when one talks about holding up a movement from the standpoint of safety in the railroad industry, we are talking about holding up as many as 100 other movements.

We obviously have fewer options to move through areas because there are fewer of track routes than there are highways. We have had very little problem with State authorities, and therefore would argue against greater Federal preemption.

The proposed amendments also suggest that we should give increased emphasis to routing. This is not a new legislative stipulation. The present routing powers are in the existing law. On the other hand, we gravely fear that this restatement will mandate routing requirements.

In 1982 the Department of Transportation did a major study of what routing would produce in terms of improved safety. They found with railroads, in terms of alternative A, finding different ways to move it on the same railroad, that there were no net benefits. What happened was you move the goods longer distances, over worse track, and increase the accident exposure.

They also looked at another alternative, changing which carrier moved the goods a certain distance. When you do this, what obviously happened is you dramatically increase the cost of movement. The tendency is to divert traffic to other modes, which because of the combined public-private transportation system nature of their operations have greater hazards.

We took a look at those results and we would point out to you that in the routing analysis that they made their assumed level of casualties was six times higher than it was last year.

We also have real problems with prenotification. A million shipments, 200 communities, that is 200 million notifications a year, with 63 incidents. We carry our own prenotification system on each train, which identifies the commodity and identifies the response system, and we would think that any form of prenotification of the type suggested would end up causing far more trouble than it would——

Senator **Danforth**. Let me cut you off right now, sir, because your time is up. Really, I was surprised to see your name on the witness list, because this was intended to be a highway safety bill and not a rail safety bill, and that is not to say that the same problem does not exist with respect to railroads.

But I just checked with staff to find out what the problem was here, and they said that it was a technical drafting problem. So let me assure you that, with respect to rail transportation, that is not part of this particular bill.

[The statement follows:]

Statement of Richard E. Briggs, Executive Vice President, Association of American Railroads

My name is Richard E. Briggs. I am Executive Vice President of the Association of American Railroads (AAR), a nonprofit association whose members account for ninety-five percent of railroad freight revenues and operate ninety-four percent of the railroad trackage in the United States.

The Association of American Railroads appreciates this opportunity to comment on the proposed amendments to the Hazardous Materials Transportation Act. The railroads carry a substantial amount of hazardous materials which are vital to many segments of the economy. In performing that service the railroads have undertaken their responsibilities to the public and to their employees with remarkable success. This success not only comes from day-to-day and shipment-by-shipment efforts on the part of individual railroads, but also involves intra- and inter-industry cooperative safety programs. Additionally, the existing federal regulatory program already in place constitutes an important ingredient in the safe transportation of hazardous materials by rail.

Title IV of S. 1108, the Hazardous Materials Transportation Act Amendments of 1983, springs from a concern that the Hazardous Materials Transportation Act (HMTA) does not adequately address the desire for a hazardous materials transportation system which is as safe as possible. The bill calls for additional hazardous materials regulations covering a wider number of subjects than the current regulatory scheme. We believe that many of the provisions in this bill were inspired by the record of hazardous materials incidents for modes of transportation other than rail. These provisions will not contribute to the safe transportation of hazardous materials by rail. To understand why this bill would burden rail operations without contributing to safety, it is necessary to review what has been occurring in the field of the transportation of hazardous materials by rail.

II. HAZARDOUS MATERIALS TRANSPORTATION INCIDENTS

While seventy percent of the transportation of hazardous materials takes place on railroads (excluding petroleum), less than ten percent of the hazardous materials transportation incidents are railroad incidents. In 1982, the railroads transported approximately 901,000 carloads of hazardous materials. There were only sixty-three releases from railcars resulting from accidents, representing seven one-thousandths of one percent of the 901,000 hazardous materials carloads.

The hazardous materials record of the railroad industry is impressive and still improving. When we testified in 1981 before this Committee on this subject, we noted that in 1979 there were 228 injuries related to the transportation of hazardous materials by railroad and no deaths. In 1980, there were two deaths when two members of a train crew were killed in a derailment resulting from a mudslide and the subsequent puncture of a tank car of anhydrous ammonia. It is gratifying that we can report there have been no deaths associated with the transportation of hazardous materials by railroad since that incident. Last year there were only 36 injuries associated with the transportation of hazardous materials.

These statistics paint an accurate picture of railroad hazardous materials transportation incidents. Despite the publicity that railroad accidents receive, the railroads are transporting hazardous materials safely.

Before leaving the topic of accident statistics, it would be useful to examine the latest railroad accident involving hazardous materials to receive large amounts of publicity. Last September, a freight train containing hazardous materials derailed in Livingston, Louisiana. Fires started almost immediately and local residents were evacuated for two weeks. The cleanup of the environmentally hazardous materials continues. The incident sounds like a tragedy, and it unquestionably produced an awesome spectacle on the evening television news shows, but it proved that the existing emergency response system is working. There were no deaths and the injuries that occurred were relatively minor. The railroad promptly notified the state police, its own hazardous materials experts, and others. Public officials were informed of the nature of the chemicals and experts from the involved chemical companies came to the scene. This incident was handled well by all concerned and was a testimony to the preparedness of the public officials, the railroad industry, the chemical industry, and others. As our testimony will show, the railroad industry is ensuring that it transports hazardous materials in a responsible manner.

III. SAFETY IMPROVEMENTS

The railroads have not been complacement. Rail operations, given the nature of the industry, involve some risks and the industry is striving to reduce those risks. The record amounts of money spent in recent years by the railroads on equipment and maintenance have had an extremely beneficial impact on rail safety. The AAR itself has undertaken several efforts which will improve safety. A discussion of these efforts follows.

A. *Track train dynamics.*—Currently, one of the most comprehensive research programs in the railroad industry is Track Train Dynamics, begun in 1972 and supported by FRA, individual railroads, the railroad supply industry, the Transportation Development Agency of Canada, and the AAR. This program has developed a set of guidelines for train handling that describes the best way to maintain a train in a dynamically stable condition, given weather conditions, terrain, the length of a train, and the distribution of weight in the train. These widely adopted guidelines have eliminated a large number of derailments. This program has also resulted in procedures and analytical models for the investigation of accidents, fatigue guidelines for car structure components, and prototypes of dynamically stable covered hopper cars.

B. *Facility for accelerated service testing.*—The Facility for Accelerated Service Testing, or FAST, is a 4.8 mile loop of test track operated by the AAR in Pueblo, Colorado. FAST enables the AAR to study railroad equipment under experimental conditions, sometimes ten times as intense as conventional railroad operations. FAST provides an excellent opportunity to compare equipment. FAST operations have resulted in the spotting of deficiencies in equipment prior to the use of the equipment by railroads and opportunities for utilizing advanced technologies.

C. *The hazardous material information system.*—The AAR has initiated a program to develop emergency response, containment, mitigation, cleanup and disposal guidelines for those hazardous materials transported frequently by railroads. The program includes the development of commodity specific emergency action guides, computerized information to aid in the selection of the best measures to take at a specific emergency scene, a medical reference manual containing information for physicians treating those exposed to chemicals, and a hazardous materials data base with information on health hazards, protective clothing, and pollution problems.

D. *The inter-industry task forces.*—In the late 1970's an Inter-Industry Task Force on Rail Transportation was formed. The task force created a program for presentation to fire fighters and others involved in emergency responses. This program, "Recognizing and Identifying Hazardous Materials," helped prepare local emergency response forces. Prepared by shipping and transportation companies without government funding, it was shown to over 150,000 people. Today, individual railroad companies continue to present emergency response information to fire fighters and other local officials. In light of the role which would be assigned to the Federal Emergency Management Agency (FEMA) by S. 1108, it is interesting to note that several years ago this program was forwarded to FEMA for its use. To our knowledge, FEMA has never used it.

The success of the task force led to the formation of a permanent inter-industry working group to suggest further improvements in the safe transportation of hazardous materials and the handling of spills. The Association of American Railroads (AAR), the Chemical Manufacturers Association (CMA), and the Railway Progress Institute (RPI) began work in June 1982 to advance the knowledge and safe practices associated with hazardous materials.

This new inter-industry initiative is designed to consolidate and advance prior accomplishments and to address additional issues that will lead to safer transportation of hazardous materials. Three major areas of study have been identified: Accident and release prevention; accident and release response; and information programs.

Projects the task force is sponsoring under the Accident and Release Prevention category are divided into two areas: non-accident release prevention and accident release prevention. A review of data on non-accident releases is being conducted to identify areas where action can be taken to prevent leaks and splashes of materials from tank cars. Development of a pre-trip car inspection program for shippers is also underway. Data on accidents involving releases of hazardous materials are being compiled to pinpoint areas for further improvement in containers and handling procedures.

Under the general heading of Accident and Release Response, several key projects are underway aimed at problems identified in S. 1108. Concerns in the area of chemical data and response information are being addressed. Projects are underway to review emergency information needs. Possible improvements to the very successful CHEMTREC program are being considered along with other information sources such as the AAR Hazardous Materials Information System discussed elsewhere in this testimony.

Accident notification and response procedures are being analyzed for ways to improve the overall response performance. Incident reporting and communication networks are being reevaluated for possible improvements. Better, faster, and more uniform response actions and safety measures are being addressed by the task force along with the potential for more special product mutual help teams like the CHLOREP team sponsored by the Chlorine Institute.

Accident site management is also a major concern. The question of who is in charge is often the result of the lack of preplanning involving the community and other first-response parties. It can result in unnecessary delays in accident response actions that are costly and dangerous. Because of this, the task force is addressing this problem with particular emphasis.

Information programs are the third area of activity by the Inter-Industry Task Force. This group plans to participate in and encourage the development and use of cost-effective safe transportation, packaging and distribution methods, equipment, facilities, and practices, and improved communication among the industrial and public communities. Another communication method encouraged by the task force is strong industry participation in regularly scheduled hazardous materials spills conferences.

An effort in the area of public emergency preparedness is also underway. A community contingency planning package is being considered for development. This would include training workshops and a performance evaluation procedure. Measures to deal with sabotage and terrorism are also being considered since some incidents have occurred as a result of these dreadful tactics.

Such efforts clearly demonstrate that the rail transportation, chemical, and railway supply industries are committed to the objective of making hazardous materials transportation even safer than it is today, and to promote greater public awareness and safer, more effective response capabilities.

E. *Tank car improvements.*—The major safety-related project of the railroad industry—in fact, the most extensive freight transportation safety study ever undertaken by private companies—has been one dealing with pressurized tank cars. The cooperative program involving the AAR, the Railway Progress Institute (RPI), and the Federal Railroad Administration (FRA) was started in 1970.

Based on recommendations that developed out of the project, the AAR has required since January 1979 that all new tank cars be fitted with shelf-type couplers. DOT issued regulations in 1978 that required all in-service Types 112 and 114 pressurized tank cars to be retrofitted with these couplers. Types 112 and 114 tank cars were also retrofitted with head shields and those used to transport flammable compressed gases with head shields and specified thermal insulation.

Shelf couplers are designed to resist disengagement in a derailment and prevent the accidental "spearing" of a tank car by an adjacent car. The head shield also protects against spearing identified as a major cause of tank car ruptures in derailments.

To minimize the potentially disastrous effects of fire leading to an explosion of hazardous materials, thermal insulation with jackets and thermal insulation spray-on coatings have been developed.

Through Docket No. HM-174, the Materials Transportation Bureau (MTB) is requiring that new types 105 and 111 tank cars used for the transportation of ethylene oxide and flammable compressed gases be similarly protected. In that docket, DOT also mandated that all tank cars be retrofitted with shelf couplers by March 1, 1985, In Docket HM-175 the railroads are supporting MTB proposals to install head shields and thermal insulation on existing types 105 and 111 tank cars carrying certain products.

In another effort to ensure the safe transportation of hazardous materials in railroad tank cars, the AAR has adopted a requirement that tank cars with bottom fittings or outlets be protected to reduce the possibility of product loss in an accident. A retrofit schedule, taking into account the relative degree of hazard posed by various commodities, has been developed. Tank cars transporting commodities assigned a high hazard rating must be retrofitted first. All cars must be retrofitted by the end of 1990.

F. *The Bureau of Explosives.*—The AAR's Bureau of Explosives was established in 1907 to promote the safe handling and transportation of hazardous materials, to collect, analyze, and make available information on hazardous materials, and to provide emergency assistance to its members. Its Washington, D.C. headquarters is staffed with experts in the loading of rail cars, tank car design and construction, chemistry, and environmental matters. Supporting the headquarters staff are seventeen inspectors located throughout the United States and Canada and a laboratory with three chemists. The inspectors audit railroad facilities and physically check rail cars to ensure compliance with hazardous materials regulations. Each year the inspectors also visit at least 500 plants where hazardous materials are shipped to ensure that hazardous materials are properly prepared for shipment. At the Bureau's laboratory chemicals are tested to determine their proper hazardous material classification, materials from derailments are analyzed, and risk analyses performed

Other functions of the Bureau include the review of applications for approval of plans to construct, alter, or repair tank cars, assistance at accident sites, and the publication of books, pamphlets, and posters on hazardous materials.

IV. HAZARDOUS MATERIALS TRANSPORTATION ACT AMENDMENTS OF 1983

Not only is the railroad industry's safety record impressive, but the railroad industry, its customers and the railroad supply industry are also striving to make a good system better. These efforts are showing tangible results. The tank car is being made safer. Knowledge of the characteristics of the hazardous commodities is increasing. Information flow is being improved. Emergency preparedness and response plans are in place and subject to constant improvement. Cooperation between industry and community emergency response organizations is an integral part of the railroads' hazardous materials safety programs. In light of these developments, the provisions of Title IV appear to be misdirected and fail to build on the solid foundation provided by existing programs.

A. *Routing and prenotification.*—Proposed section 122 authorizes DOT to establish regulations for the routing of hazardous materials and a prenotification system which would enable states and local governments to receive advance notice of hazardous materials shipments. Currently, section 105 of HMTA authorizes DOT to establish regulations governing any safety aspect of hazardous materials transportation, specifically including routing. While section 122 does not specifically compel

DOT to issue routing regulations, it does more than just restate DOT's authority to issue such regulations. We are concerned that DOT will interpret this section as a Congressional directive to promulgate routing and prenotification regulations.

In light of the DOT study entitled "Aggregate Effects of Rerouting Hazardous Materials Railroad Shipments," railroad routing regulations would not contribute to improve rail safety. That study, published in March of 1982, was issued by the Transportation Systems Center under the direction of DOT's Research and Special Programs Administration. The study estimated what the hazardous materials flow patterns were for the U.S. railroad system in 1977 and then hypothetically altered these patterns to avoid populated areas. The study used two alternative route patterns based on the avoidance of population centers. One pattern kept the same junctions between railroads, but used different routes within an individual railroad system so that the market shares of railroads would not be affected. The other pattern ignored existing junctions. Accident and casualty rates were then computed for these alternative routes.

The study concluded that there would be no advantage to rerouting with historical junctions maintained because the advantage of reduced population exposure is counteracted by the necessary circuitry in shipping patterns and diversion of traffic to lower quality track. Rerouting with new interchange points would significantly reduce casualties, the study noted, but at a cost of extreme changes in railroad market shares. This finding was based on casualty data from 1976 to 1978. Since the industry's safety record has substantially improved in recent years, any benefits estimated in the study are overstated. In view of the reduction in the number of hazardous materials casualties to 36 in 1982, the effects of rerouting would be minimal (the study hypothesized 240 annual hazardous materials casualties). Furthermore, the study did not include an analysis of the extent to which there would be diversion of hazardous material traffic from rails to less safe modes because of the additional costs and increased transit times resulting from circuitous rerouting. Railroads construct and maintain their own rights-of-way and have the expertise to determine the best rail routes.

The study, interestingly enough, stated that the expected number of casualties could be reduced more by upgrading 120,000 miles of track to FRA Class 4 than by rerouting. The cost to upgrade 120,000 miles of Class 1, 2 and 3 track to Class 4 would be in excess of $5 billion.

The railroad industry is adamantly opposed to regulations on routing rail shipments of hazardous materials. Routing of trains is a decision made by railroad and shipper managements based upon many factors, including safety. The routes chosen, in our judgment, are optimal from the standpoint of safety and efficiency. Moreover, the Secretary has already studied this question under his existing authority and has rejected the concept.

Section 122 would also give the Secretary the discretion to adopt regulations requiring a prenotification system which would inform state or local governments in advance of the timing, nature, and routing of hazardous materials shipments through their jurisdicitions. That such a proposal is given serious consideration for application to the railroads is of grave concern. It displays a distinct lack of understanding of the needs of state agencies and the realities of railroad operations.

Local agencies cannot really want prenotification of every single hazardous material passing through their towns. First, it is not feasible. The complexity and cost of the communications network necessary to link every community with every railroad system that passes through it staggers the imagination. Each community would have to be provided with dedicated lines and communications terminals. In many communities, for example a suburb in Chicago, these terminals would be listing, almost continously, consist data for every approaching train containing hazardous materials. It is totally unrealistic to expect that local agencies could make any intelligent use of such volumes of data. Even if it were feasible to provide local agencies with such data, it could be provided no sooner than a few hours in advance of the arrival of each train carrying hazardous materials. Second, it will not help local officials to effectively respond in the event of an incident involving hazardous materials. There is a superior approach to the communities' concern—preplanning. The odds are so low that a derailment will even occur, let alone result in a spill of a hazardous substance, that communities should concentrate on plans compatible with many types of emergency situations. Railroads and local governments can and do work together to prepare for responding to incidents involving hazardous materials.

Third, in many areas, railroads handle hundreds of hazardous material shipments every hour, every day. It is unrealistic to think a carrier could supply this amount of information. There is no simple method of supplying advance notice because railroads frequently do not know in advance what materials they will be receiving from a shipper, a connecting railroad, or a trucking company. Requiring advance notification in these cases would be a nightmare. Entire trains would be held at the point of interchange or in yards pending notification, creating horrendous backups. Such delays are counterproductive and conflict with better-reasoned current regulations which prohibit unnecessary delay of hazardous material cars.

If hazardous materials are involved in an accident, identification of the commodity can be quickly made through the waybills which are required to identify hazardous materials. The waybills must contain the proper shipping name, the hazard class, and the UN identification number. After identification, appropriate experts such as CHEMTREC can be contacted on a moment's notice. All this negates the need to collect interminable paper. Neither a prenotification system nor the establishment of a complex response system which officials would rarely, if ever, use, and as a result have trouble remembering, would benefit local officials responsible for emergency response.

B. *State enforcement of hazardous materials regulations.*—Section 121 provides that DOT may make grants to states for programs for the enforcement of hazardous materials regulations. It is the AAR's belief that insofar as the railroad industry is concerned, state enforcement of Federal transportation regulations is unwise, unless it is closely tied to the Federal program.

It is the experience of the individual railroads that increased State participation in Federal rail safety programs results in a variety of enforcement programs. This subjects the railroads to inconsistent enforcement practices. For that reason the railroads oppose the encouragement of State programs with Federal financial support.

However, if Federal funding is to be provided, the law should specifically provide that State inspectors must possess qualifications to be established by the Department of Transportation.

C. *Evaluation of training programs.*—Sections 123, 124, and 125 would authorize the Director of the Federal Emergency Management Agency, also known as FEMA, to study and evaluate training programs used by Federal, State, and local governments, and private organizations for response to incidents involving hazardous materials. If the Director finds these training programs inadequate, he is to develop appropriate programs which will be provided upon request to training agencies.

The Director will also have the authority to develop "coordinated and effective emergency response programs" by making grants to State and local governments to assess present response capabilities, including manpower, equipment, and the assignment of lead responsibility for responses. Finally, the Director is to conduct research and development activities to achieve effective emergency response capabilities.

We have no objection to further developing emergency response plans. While effective response to transportation accidents involving hazardous materials is very important, DOT and the rail and chemical industries constantly evaluate and improve programs already in place. Together they have developed a coordinated approach to a number of problems. A new agency's involvement is not necessary.

While the Director of FEMA is supposed to coordinate his efforts with DOT, it is FEMA which is given the major role. Generally, the railroad industry supports increased coordination between government agencies, but we feel very strongly that DOT should remain the responsible agency in the area of train operations. There is no reason to inject an agency such FEMA into a highly specialized field in which DOT, not FEMA, has the experience and knowledge. While FEMA may have experience in emergency prepardness and response actions for many situations calling for emergency medical services and housing assistance it does not have any expertise in railroad operations. If there is a study to be conducted, it should be conducted by DOT with FEMA rendering appropriate assistance as needed.

V. CONCLUSION

The railroad industry has demonstrated a remarkable ability to bring about a safety record that rightfully inspires pride and it has even more importantly demonstrated an ability to keep improving on that record no matter how good it gets. As long as dangerous chemicals are vital to America's economy, there will be a hazardous materials concern. The members of the Association of America Railroads believe that now is the appropriate time for that concern to mature from a crisis atmosphere to one of recognition of the worth of what has been, is being and will be done by the shippers and carriers of these materials.

There are areas which can be improved, and we are working to improve them. But we are not looking at a problem which can be addressed in the manner contemplated in Title IV of S. 1108.

[The following information was subsequently received for the record:]

Association of American Railroads,
Washington, D.C., August 17, 1983.

Hon. John C. Danforth,
Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.
(Attention: Karen Borlaug Phillips.)

Dear Senator Danforth: This is in response to your letter of August 5, 1983, containing two questions posed by the Minority members of the Committee on Commerce, Science, and Transportation as a supplement to the hearing record in connection with S. 1108.

The first question noted the railroad industry's request that it be exempted from rerouting and prenotification provisions of S. 1108 and elicited the industry's views on the other provisions of Title IV of S. 1108. First, let me reiterate the reasons we do not support application of rerouting and prenotification regulations to the railroad industry. Routing decisions involve the consideration of many factors, such as the condition of track and the amount of time a shipment would have to spend in transit (the more time a shipment spends in transit, the greater the chance that something could happen to the shipment). As we stated in our testimony, the Department of Transportation study of railroad routing did not support the institution of a railroad rerouting scheme based on population avoidance and the Secretary has rejected the concept. The railroads and their shippers are the ones best suited to the task of choosing routes. Insofar as prenotification is concerned, we set forth in our testimony a number of reasons why prenotification schemes are not compatible with railroad operations. Most notably, local agencies could not make use of the large amounts of data they would get under a prenotification scheme.

S. 1108 would add a new Subtitle B to Title I of the Hazardous Materials Transportation Act. Section 120 of that new Subtitle would direct DOT and the Federal Emergency Management Agency to evaluate existing training programs, disseminate information on the transportation of hazardous materials and training for emergency response, and establish training centers. Existing section 109 of the Hazardous Materials Transportation Act currently authorizes DOT to evaluate training activities. If, however, Congress determines that it is necessary to make a more specific grant of authority in this area, that authority should be given to the Department of Transportation, not FEMA.

Section 121 would authorize DOT to provide grants to States for the support of hazardous materials enforcement programs. We feel that uniformity of regulation is highly desirable and thus, insofar as the railroad industry is concerned, State enforcement of Federal transportation regulation is unwise unless it is closely tied to the Federal program. If federal funding is provided, the industry believes that DOT should establish qualifications for State inspectors as it has done in other areas of railroad safety.

Sections 123, 124, and 125 would authorize FEMA to study emergency response programs and to make emergency response planning grants to state and local governments. It is our strong belief that DOT, not FEMA is the appropriate agency to oversee all aspects of hazardous materials transportation.

The second question posed by the Minority members of your Committee asked us to comment on the proposals of the "coalition comprised of state and local representatives and hazardous materials shippers and motor carriers." The AAR has participated in the coalition's discussions, and it should be noted that there has been no agreement on specific proposals. Significantly, the problems addressed by the coalition arise from circumstances involving motor carriers—not railroads. For example, the coalition's consideration of a system for financing of emergency response efforts is based on assumptions not applicable to the railroad experience. It is the apparent belief of some members of the coalition that industry in general is not doing its fair share in the emergency response field. Nothing could be further from the truth insofar as the railroads are concerned. Our industry has poured tremendous sums of money into emergency response efforts. The railroads, with the railroad supply industry and shippers of hazardous materials, have joinded in cooperative programs involving research, equipment improvement and emergency response training. If there is a railroad incident, the railroads respond quickly and with appropriate means. Not only are railroad personnel trained and equipped to respond to hazardous materials emergencies, but, as we indicated in our testimony, the railroads educate local officials in railroad operations and hazardous materials handling procedures. Thus, the railroads are fulfilling their responsibilities, financial and otherwise, in the emergency response field.

Thank you for the opportunity to further comment on the provisions of S. 1108. Please let us know if there are additional questions.

Sincerely,

RICHARD E. BRIGGS.

STATEMENT OF WILLIAM E. JOHNS, MANAGING DIRECTOR, TECHNICAL SERVICES DIVISION, AMERICAN TRUCKING ASSOCIATIONS, INC., ACCOMPANIED BY ROBERT A. HIRSCH, LAW DIVISION

Mr. JOHNS. Mr. Chairman, I am representing the trucking industry, the highway interest, and I think I am in the right church and the right pew.

My name is William Johns. I am managing director of the Technical Services Division of American Trucking Associations. ATA is the national association for the trucking industry, representing all types and forms of carriers, motor carriers.

With me on my right is Robert Hirsch, an ATA attorney who has had a substantial involvement with the regional, Federal, State, and local officials in trying to resolve conflicts in the many laws and regulations governing the transportation of hazardous materials.

We appreciate this opportunity to present a brief summary of the points presented in the written statement which ATA has previously submitted to this committee.

Each year, we are proud to say, hundreds of thousands of hazardous materials shipments are transported safely in the United States. Although incidents do occur, most are infrequent and almost always involve a minor spill or leak which in no way jeopardizes the safety of the public. Unfortunately, there have in the past been some serious accidents.

We recognize that the transportation of hazardous materials presents the potential for such accidents occurring again in the future. This is why the trucking industry has been and continues to be a strong supporter of safety in the transportation of hazardous materials and why we support sound, practical legislative and regulatory programs for accomplishing it.

The prerequisite in such a program is the need for stronger national leadership in the regulation of hazardous materials. Congress in our view must provide the authority for such leadership. The Department of Transportation should be designated the lead Federal agency in all matters concerning hazardous materials transportation. When this occurs, Congress will have done much to eliminate the confusion currently within the transportation community caused by a division of leadership roles, spread among the Department of Transportation, Environmental Protection Agency, Occupational Safety and Health Administration, and the Federal Emergency Management Agency.

In recent years there has been a proliferation of differing regional, State, and local laws governing hazardous materials transportation. While these laws may reflect the good intention of particular governments to reduce potential risks to their own citizens, in most instances their laws have done little more than shift the risk from one jurisdiction to another. In our opinion, such a regulatory approach should be rejected by this committee.

Fundamentally, there are areas where regulations controlling hazardous materials transportation must be nationally uniform, areas where only the Federal Government should be permitted to promulgate regulations. These areas include such things as shipping documents, warning labels, signs on trucks, container specifications, and marking the packages.

At the same time, however, regional, State, and local governments should have the opportunity for input into the regulatory process, and we encourage them to participate in the various rulemakings before the Department of Transportation.

The issue of routing has been one area where regional, State, and local governments have been most active. Title IV of S. 1108 contains a provision which calls for the participation of such governments in the selection of preferred routes and modes of transportation of hazardous materials within their jurisdictions. ATA believes that they should be able to promulgate routing regulations, but within limits of performance standards established at the Federal level by DOT.

However, we strongly oppose provisions of law which would allow the Secretary of Transportation or others to specify which mode or modes of transportation must be used. In our direct dealings with local governments, ATA has used a task force approach in attempting to resolve problems and we have found it to be effective. We urge Congress to promote legislatively the concept of task forces comprised of industry and government. In our opinion, this is a sound, practical and responsible way to address regional, State, and local concerns.

For the past year and a half, ATA has been a member of the coalition represented at this hearing today. Last month the ATA executive committee endorsed all of the concepts thus far agreed to by the coalition. We urge the committee to give serious consideration to the coalition's recommendations.

Finally, ATA's participation in the coalition evidences the trucking industry's interest in working together with regional, State, and local governments to resolve satisfactorily the concerns we commonly share regarding hazardous materials transportation. However, our efforts have not and will not stop with participation in the coalition.

Shortly, we will petition the DOT for a rule that would require every motor carrier facility to maintain and make available a copy of the DOT emergency response guidebook for use in the event of a hazardous material incident. This is a further indication of the trucking industry's continuing interest to insure that motor carrier transportation of hazardous materials is conducted in a safe and responsible manner.

Mr. Chairman, that concludes our brief comments on behalf of ATA. We will be willing to answer questions the committee might have.

Senator DANFORTH. Thank you very much.

[The following information was subsequently received for the record:]

American Trucking Associations, Inc.,
Washington, D.C., September 15, 1983.

Ms. Karen Borlaug Phillips,
U.S. Senate, Committee on Commerce, Science and Transportation, Washington, D.C.

Dear Ms. Phillips: As requested by Senator Danforth, I am writing to provide answers to questions posed by Democratic Members of the Surface Transportation Subcommittee to supplement the hearing on S. 1108 and hazardous materials transportation.

We are pleased to have the opportunity of answering these questions, particularly as they concern registration because the ATA Executive Committee looks on registration as a possible vehicle for requiring all carriers who transport hazardous materials to demonstrate safety fitness, including minimum levels of financial responsibilities as a condition of registration.

The information I am providing is based on the informal views of ATA staff members who are involved in hazardous materials regulatory activities. It does not reflect a formal position of American Trucking Associations, Inc., or of the coalition that ATA has been working with.

The first question posed by the Democratic Committee members asks about the mechanics of a national system by which companies whose operations affect the safety of hazardous materials transportation would be registered. In our view, the registration program should be administered by the Materials Transportation Bureau with the support and cooperation of other key units of the U.S. Department of Transportation, such as the Bureau of Motor Carrier Safety. There are voluminous listings of shippers, carriers and container manufacturers within DOT that can be utilized to determine who should receive registration information and to use for comparison purposes against the registration file to determine if those companies which are probably subject to the registration requirements have, in fact, registered.

For example, the Materials Transportation Bureau has thousands of carriers, shippers and container manufacturers listed in its files as a result of requirements that carriers report unintentional releases of hazardous materials, and through its special permit program which allows companies to deviate from regulatory requirements under controlled conditions. The Bureau of Motor Carrier Safety has a computerized safety rating program which identifies 190,702 private and for-hire motor carriers. With the current capabilities of computers, it is probable that files in DOT and a national registration system could be combined by DOT in a multipurpose computer file, and thereby provide a benefit from the standpoint of economy and efficiency.

Those companies subject to the requirement to register could be made aware of their responsibility to register by widely publicizing the requirement in the Federal Register, in publications of state and local governments, in publication of the chemical, petroleum and transportation industries, and in journals of appropriate professional societies. Parties subject to the registration requirements would be advised, through such publicity, of pertinent information such as registration requirements, and deadline for registration, and how to obtain registration materials.

Regulatory, enforcement and emergency response agencies of state and local governments could publicize registration through their mailing lists and through direct contact with organizations within their jurisdictions which would probably be subject to registration.

Registration materials would be provided by DOT to applicants and to parties of record in DOT files. There would be a mechanism to avoid duplicate mailings of registration materials, and we do not believe it would be difficult to set such a mechanism in place in a computerized program.

Registration would consist of establishing an identification file and possibly a registration identifier for each registered company.

For enforcement purposes there might be a requirement that the identifier be shown on shipping papers, vehicles, containers or elsewhere as appropriate. The program could be enforced through current DOT programs, such as programs for inspecting shipper and carrier facilities, the special permit program and the roadside inspection program. For example, an inspector of truck equipment at a roadside inspection also notes the presence of hazardous materials on the vehicle and checks to determine if the vehicle, driver and loan are in compliance with hazardous materials regulations. It would be a simple matter to have the inspector also check to determine the presence of identifier numbers which show that the motor carrier and shippers of hazardous materials being transported on the vehicle have registered. If evidence of registration is missing, appropriate action can be taken by DOT to have the company(s) registered.

The Democratic Members of the Subcommittee have also asked for an example of an "operational" performance standard which would allow state and local governments to exercise some jurisdiction over hazardous materials transportation, and for and example of a state or local action which would be acceptable under such a performance standard.

Such a performance standard would be necessary to allow state or local governments the opportunity to require that vehicles transporting materials of extremely high hazard follow special routes designated by the state or local government. The trucking industry would not oppose such routing provided that it is limited to materials of extreme hazards, and that the routing is both safe and practical.

State or local action necessary would be to determine routing which meet the criteria set forth in the performance standard, and to determine also if such routing would have an adverse effect on neighboring states or localities by forcing trucks transporting such high hazard materials into other areas that might not be as safe from the standpoint of the public and the truck operator.

If a state, or locality, finds it essential to designate special routes, the selection of such routes should be determined by a priority listing of highway types and limits of circuity set forth in the performance standard. The priority order in the performance standard might be as follows:

(a) Any interstate highway or any other multiple-lane divided and access-controlled highway.

(b) Any other highway, four or more lanes in width, not divided and/or access controlled.

(c) Any two-lane highway having traveled lanes 12′ or more in width.

(d) Any two-lane highway having traveled lanes less than 12′ in width.

(e) Any other available highway or road.

Limits on additional travel distance to be required relative to the standard routing might be set as follows:

(a) The lesser of 100 percent or 25 miles where the shortest available highway distance is 100 miles or less.

(b) The lesser of 10 percent or 25 miles where the shortest available highway distance is more than 100 miles.

The state or local government would need to permit the driver to go off-route under the following circumstances:

(a) To reach a point at which cargo is to be loaded or unloaded.

(b) To reach the terminal of a motor carrier or a similar facility.

(c) To reach a place where the vehicle may be serviced or repaired.

(d) To reach a place where the vehicle may be fueled and/or where the drivers can obtain food and rest.

(e) To follow any detour.

(f) To cope with any emergency condition.

The characteristics of the surrounding environment must also be considered by the state or local government. Clearly, if two routes of equal, or nearly equal inherent safety are available, it is good sense to use the one that goes through the least heavily populated area, provided doing so does not create other undue problems. One factor that must be considered is whether or not barring transportation from one highway, or segment of it, will require the use of inherently less safe routes, e.g., barring trucks from the tunnels of the Pennsylvania Turnpike requires the use of U.S. Routes 30, 22, and 322; the prohibition through the Eisenhower Tunnel on I-70 in Colorado requires the use of Loveland Pass (unless the pass is closed); the prohibition on the use nof the tunnel as Wheeling, West Virginia, on I-70, forces trucks carrying hazardous materials to use city streets.

A Department of Transportation performance standard on routing would probably be structured along the lines of criteria in its publication, "Routing Criteria for the Highway Transportation of Hazardous Materials." The publication deals with factors of road design, accident experience of routes, proximity of suitable alternative routes and population density.

To assure that local governments and industry are involved in the development of special routes for high hazard materials the performance standard should require that states and localities establish advisory groups composed of government officials and industry representatives. To be certain that other states and localities are aware of routing considerations of another jurisdiction and that they have the opportunity to comment on potential impacts such routing might have on them, the performance standard should require public notice of the intended action and solicitation of comments by mail contact and through public hearings. This is essential so that local governments will be more considerate of each other and to eliminate current practice by local governments of instituting routing requirements without consideration of the impacts such requirements will have on neighboring communities.

I hope that the foregoing provides the information which the Democratic Members are seeking and that you will let me know if you need any additional information or views on the matter of hazardous materials transportation.

Sincerely,

William E. Johns,
Managing Director.

Senator **Danforth**. Mr. Mayer.

STATEMENT OF CHARLES H. MAYER, VICE PRESIDENT, NUCLEAR AND HAZARDOUS MATERIALS DIVISION, TRI-STATE MOTOR TRANSIT CO., ACCOMPANIED BY ALBERT THOMSON, GENERAL COUNSEL

Mr. **Mayer**. Thank you, Mr. Chairman.

I am appearing here as a representative of Tri-State Motor Transit Co., my employer, as its vice president of Nuclear and Hazardous Materials Division. On my right is Mr. Albert Thomson, our general counsel.

Tri-State Motor Transit Co. is an Interstate Commerce Commission-certificated common carrier, authorized to transport, among other commodities, hazardous materials, both nuclear and chemical. We have been engaged in the transportation of this material for over 30 years, and in that time we have not had a single incident of release of material, overexposure, or injury to anyone or the environment. We transport over 6,000 loads of nuclear hazardous material per year, over an aggregate distance greater than 7 million miles.

We are finding it increasingly difficult to comply with the regulations, the patchwork of regulations that are beginning to emerge on the scene at the various State and local levels. We are also finding that these requirements are being based on local considerations and frequently cause neighboring communities to be subjected to more hazardous conditions.

An example of that would be a community that has banned the movement of, say, radioactive materials through there, causing us to move over a greater distance and over secondary highways.

We support the National Research Council's recent report to the Congress, in which it urges the establishment of a single lead Federal agency responsible for and accountable for the safe transportation of hazardous materials. We support this wholeheartedly and we would like to see it come about.

The powers of State and local governments to regulate and to express their views on the routing and the regulation of hazardous materials should be considered by a Federal agency, and we support that part of it.

Again, I just want to say that we support a single lead agency. We feel that, with the exception of section 122, of paragraph (3)(a) involving the selection of the mode of transportation—we oppose that. We feel that it may open up avenues of prejudicial judgment and argumentative situations.

Other than that, we support your bill and we would urge that it would be accepted.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF CHARLES H. MAYER

I am Charles H. Mayer, and I am here representing Tri-State Motor Transit Co. ("Tri-State") and its Vice President of Nuclear and Hazardous Materials Division. "Tri-State," located at Joplin, Missouri, is a specialized hauler of hazardous materials over irregular routes throughout the United States. I have been totally employed in the transportation of hazardous materials continuously since 1968.

Tri-State's capital stock is owned by approximately 2,000 stockholders and is presently traded on the American and Pacific Coast Stock Exchanges, where it has been listed for 15 and 11 years respectively.

Over the past 30 years, Tri-State has been, and is now, a leader in the field of the transportation of hazardous materials throughout the United States. Tri-State transports over 6,000 loads of hazardous materials (excluding explosives) per year over a total distance of more than 7 million miles. Since Tri-State began this transportation service in the early 1950's, it has not had a single incident that has resulted in the release of material or injury or over-exposure to any person. It has worked closely not only with shippers of hazardous materials, but also with the D.O.T. and the N.R.C. in carrying out the requirements of safety in this important transportation area. Tri-State revenues derived from the transportation of hazardous materials (excluding explosives) have totalled, by calendar year over the past 4½ years, as follows: 1979—$8,085,000; 1980—$11,343,000; 1981—$13,537,000; 1982—$13,693,000; first five months 1983—$5,447,000.

Tri-State has specialized personnel, a special training course and special equipment devoted exclusively to the transportation of hazardous materials. It owns or leases 31 terminals located throughout the United States.

Tri-State supports the statement of the National Research Council, which urged Congress to enact legislation to make a "single lead federal agency responsible and accountable for the safe transportation of hazardous materials. The relative roles of the federal, state and local governments have never been clearly and understandably defined."

The present Hazardous Materials Transportation Act, 49 U.S.C. 1801, et seq., permits a state or local subdivision to make its own requirements as to the movement of hazardous materials under the criteria set forth in 49 U.S.C. 1811.

This power to regulate movement of hazardous materials which can be exercised by the state and every political subdivision can and has created problems in the transportation area. For example, the federal courts upheld, in National Tank Truck Carriers v. City of New York, 677 F. 2d 270 (C.C.A. 2nd 1982), regulations of the New York Fire Department regarding transportation of hazardous gases by tank truck. The Court there stated as follows (1.c. 274-275):

"Appellants also argue that the Fire Department regulations have been preempted. 49 U.S.C. § 1811(a) provides that 'any requirement', of a state or political subdivision thereof, which is inconsistent with any requirement set forth in (the HMTA) or in a regulation issued under (the HMTA) is preempted. Appellants point to only two specific provisions of the HMTA and its accompanying regulations with which the New York City regulations might be inconsistent: the 'without unnecessary delay' provision of 49 C.F.R. § 177.853(a), and the provision of id. § 397.9(a) that trucks avoid 'heavily populated areas' unless there is no practical alternative. Appellants also suggest that shifting the danger to neighboring communities is an obstacle to the general purpose of the HMTA to ensure national safety from hazardous gas transport.

"We agree with Judge Griesa that the Fire Department regulations, as enforced * * *, are entirely consistent with, and in furtherance of, the federal regulations and their underlying purposes, i.e., to protect against risks to life and property from the transportation of hazardous materials. 515 F. Supp. at 671. First, there is no direct conflict between the New York City routing and curfew regulations and the federal regulations such that compliance with both is a physical impossibility, see Ray v. Atlantic Richfield Co., 435 U.S. 151, 158, 98 S.Ct. 988, 994, 55 L.Ed.2d 179 (1978); Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43, 77 S.Ct. 1210, 1217, 10 LEd.2d 248 (1963). The New York City routing requirements impose only a necessary delay, and allow a practicable alternative to travel through a heavily populated area, as 49 C.F.R. §§ 177.853(a) and 397.9(a) permit. Thus as in Jones v. Rath Packing Co., permit. Thus as in Jones v. Rath Packing Co., 430 U.S. 519, 540, 97 S.Ct. 1305, 1317, 51 L.Ed.2d (1977), 'it would be possible to comply with the state law without triggering federal enforcement action.' See also Buck v. California, 343 U.S. 99, 101-02, 72 S.Ct. 502, 504, 96 L.Ed. 755 (1952).

"Second, the New York City regulations do not 'stand ( ) as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,' Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941), as they plainly promote safety, which is the goal of the HMTA, while they do not overlap with any specific directives of the Secretary. The Secretary has not issued, and cannot practicably issue, specific routing requirements for localities, whose own agencies are very likely far better equipped to do so. Thus while Congress did indeed express the goal of national uniformity when it enacted the HMTA, this goal has not been extended by the Secretary to embrace the local routing necessary to avoid the dangers contemplated in 49 C.F.R. § 397.9(a)."

If every state and every political subdivision and every fire department of these bodies can enact enforceable regulations relating to the transportation of hazardous materials, then the shipper and the carrier and the public will be hopelessly bogged down in genuine efforts to comply with those regulations. There should be one and only one authority to determine requirements for the transportation of hazardous materials. This would include proper packaging, routes, approval of equipment and approval of drivers. It can and should be performed by the D.O.T.

As stated in the Department of Transportation discussion under Docket No. HM-164, Vol. 46, Federal Register page 5299, the D.O.T. stated that it believes in nationally consistent routing rules. The language is as follows (l.c. 5299): "DOT remains firm in its belief that the impact of piecemeal State and local restrictions on the transportation of all radioactive materials, including non-fuel cycle materials, signifies a need for nationally consistent routing rules."

The amendments do not mean that state and local views should be disregarded. It means that the D.O.T. has the responsibility after listening to local views, as well as the views of the shippers and carriers, to make an exclusive designation of a route based upon uniformity and consistency. The current patchwork of conflicting state and local routing requirements is not only unworkable, but unsafe.

Title IV of S. 1108 is styled, "Hazardous Materials Transportation Act Amendments of 1983." Its purposes are whole-heartedly supported by Tri-State. The promotion of public safety is paramount. That goal can be strengthened by Federal requirements which preempt State and local governmental regulations of hazardous materials transportation.

In the interest of safety the Congress effectively lowered the speed limit for all vehicles moving over the highways in the United States to 55 miles per hour. A uniform regulatory and enforcement system under Federal supervision and control is just as essential to provide for the safe transportation of hazardous materials.

Senator **Danforth**. Thank you very much.

I would like to ask the same questions to Mr. Johns and Mr. Mayer: What role should FEMA play in this area? What is the relationship in your view between DOT and FEMA?

Mr. **Johns**. Mr. Chairman, when it comes to a matter such as training for enforcement, as set forth in title IV, we very definitely believe that the Secretary of Transportation should have the lead authority. We do not think that it should be viewed as a cooperative effort between the Secretary and the Director.

We have had situations in the past where there are cooperative efforts between the Department of Transportation, OSHA, EPA, and so on, and there is a tendency of agencies which do not have the expertise in the hazardous materials field to start developing their own regulations, which often are in conflict with the Department of Transportation. For example, when OSHA started enforcing the hazardous materials requirements they set different flashpoint requirements or definitions for flammable materials than DOT had, and this created quite a problem for the trucking industry, which was subject to the jurisdiction of both agencies.

So we would emphasize that the Department of Transportation should have complete agency responsibility in all matters, and that the FEMA and other agencies should have secondary responsibility.

Mr. **Mayer**. I concur with Mr. Johns' remark, Senator. I do believe that we should have a single lead agency and that the regulations could be developed in cooperation with other agencies, not only with FEMA, but in our particular case, where we handle a lot of radioactive material, the Nuclear Regulatory Commission.

Senator **Danforth**. Do drivers who drive hazardous materials receive any special training, or is there any special standard for such drivers now in existence, and should they receive some special training and have some special standard?

Mr. **Mayer**. Tri-State Motor Transit Co. does have a special training program for its drivers. This is not a mandatory requirement, but it is one that we have imposed ourselves. I have here a copy of our radioactive materials transportation manual, which is supplemental material to our school that we conduct on drivers coming into our system.

We also have a further supplemental training program that is not given to every driver, but to those who are assigned to high-level radioactive materials, such as spent fuel and so forth.

Senator **Danforth**. What does that consist of? What kind of training is that? Is it basically giving them a booklet, or do they go to some sort of classroom situation?

Mr. **Mayer**. In the case of our general run of the drivers, they are given classroom instructions along with this booklet. It is a minimal type of training because it is our opinion that the driver's primary responsibility is to operate the vehicle safely, his second responsibility is to observe any possible problems with the shipment, and his third responsibility is to notify the proper emergency response people.

We do not try to make physicists or qualified monitors out of these drivers. We feel that a little training is worse than none at all because we may give them the impression that they are more qualified than they are.

In the case of the higher level materials, we actually send these gentlemen to a class at Missouri Southern State College Police Academy, where they are given a more detailed training, not only in the proper handling of nuclear material, but also against the possible unauthorized diversions of the shipments.

Mr. **Johns**. Mr. Chairman, I am sure that if you ask this question of Mr. Harvison of National Tank Truck Carriers, he will give you a full and detailed answer about the training of tank truck drivers.

I would like to speak to the training of drivers who handle miscellaneous freight-package materials. Primarily, these are drivers who may have small quantities or usually have small quantities of hazardous materials, and they may have more than one shipment and more than one type of hazardous material on a vehicle.

The primary effort among the motor carrier safety people who are responsible for those drivers and those shipments is to be certain that the drivers are completely informed about how to identify hazardous material, how to determine if the shipping paper is properly completed, how to determine if the shipment itself is in safe condition for transportation, and how to placard the vehicle if placarding is necessary, that is, to put on the warning signs to alert the public and enforcement people know that there are hazardous materials on board.

The last point, they want to be certain that the driver knows what to do in an emergency. They do not make any effort to make this individual a hazardous material expert with relation to specific commodities.

The program has been highly successful. A large part of the program is based upon training materials developed by the American Trucking Association and provided to the trucking industry.

The coalition, the Hazardous Materials Coalition, is supporting the establishment of a hazardous materials training criteria by the Department of Transportation, and ATA also supports the establishment of those criteria.

Senator DANFORTH. Thank you.

Senator Exon.

Senator EXON. Mr. Chairman, thank you very much. I apologize to you and the members of the panel this morning for not being here earlier. I had a commitment with regard to my responsibilities on the Armed Services Committee that I had to keep.

Let me, if I can, go into detail with regard to the protection of rail employees who handle hazardous materials, and in particular nuclear waste.

[Discussion off the record.]

Senator EXON. You say the railroads are not involved in hauling nuclear waste?

Senator DANFORTH. Not in this particular bill. This is only highway safety.

Senator EXON. Do you think this is an appropriate time for us to begin to address the issues of the railroads?

Senator DANFORTH. You can address that if you want.

Senator EXON. What about the overall of protection of railroad employees or any other employees who might inadvertently come into contact with waste? We all recognize that this is an area of uncertainty, but still I feel it is important to have protective clothing and possibly devices that would indicate when certain hazardous materials or nuclear waste may be escaping. How much attention has been given to this area by any of you at the table this morning?

Mr. MAYER. I have to address it in two parts, because the hazardous characteristics of nuclear vary considerably from that of, say, chemical wastes, in that it is a nondetectable material from the senses. In other words, you cannot see it, you cannot smell it, that sort of thing. So we have a badging system for our drivers. They are equipped with badges which detect the radiation and we get a readout of that, so that we can maintain a record of the amount of exposure that an employee may receive, either from handling the shipment or going on a nuclear site to pick up a load.

The safety, though, of a shipment or employees of the trucking company really is a team effort on the part of the Federal Government, the shippers, as well as the carrier. Safety starts at the regulatory area, where they have provided some very detailed packaging requirements.

Second, then the shipper himself, following these regulations, usually does an excellent job in packaging them so that they can be safely transported under even the most severe accident conditions. We have the drop tests, the fire tests, that these packages have been submitted to when you are talking about type B quantities. Type A quantity materials are so low that they do not really pose any serious hazards.

So we have that sort of a program that, as I say, is a Federal-shipper-carrier responsibility. Also, the consignees on nuclear types of shipments survey the equipment upon delivery and give us a written release form that the driver and the equipment has been surveyed and found to be within DOT limits.

On chemicals, that is a different situation. We do carry—in some instances we do carry emergency kits. We have masks, breather masks, and we have emergency equipment with absorbent material, so you can contain it, absorbent material on some shipments, not all. That is about it.

Senator EXON. Mr. Mayer, let me ask you a little bit more. I am encouraged by what you have said. It looks like you have at least begun to address these critical problems.

You said there is a device that I assume the operator—the driver—would have in the cab or on him when he steps outside around this hazard, and there would be an alarm of some kind if there was a certain level of release from the containers. Is that the way it works?

Mr. MAYER. No, sir, it is not an alarm type of device. It is really—a film badge is what it is. And that film badge is turned in by the driver and it is sent to a laboratory where it is developed, and from the exposure on the film they can tell the amount of radiation that man has been exposed to.

Now, over the years, of the 6,000 loads a year that we handle, we have not yet had an incident where any of our drivers have received an overexposure.

Senator EXON. And do I assume correctly that that has been largely a result of the fact that the containers and their proper care, and the procedures have worked excellently in the cases that you are familiar with; is that right?

Mr. MAYER. Yes, sir. I would have to give the credit to the Nuclear Regulatory Commission and the Department of Transportation and the shipping industry itself in that particular area of having done an excellent job.

Senator EXON. Have there been accidents involved in any of these?

Mr. MAYER. Yes, sir, we have had accidents. Fortunately, they have all been fairly minor, what we refer to in the industry as a fender-bender. But we have never had an incident of any release of material or disruption of the container shielding integrity or its containment integrity.

Senator EXON. How have you addressed the possibility of a major catastrophe—say, a train running into one of these moving vehicles?

Mr. MAYER. Well, the gentleman to my left has asked permission to answer that. Do you mind if I let him have the microphone?

Senator EXON. Well, certainly. It is just something I think we better have an understanding of.

Mr. BRIGGS. The primary waste material that the railroads haul are the large spent fuel cores. The way we have tried to avoid any accident is to have a set of regulations and procedures for handling them that are in general far more expansive than any Federal regulations.

We had proposed to the Interstate Commerce Commission several years ago that we be allowed to move these casks, which were becoming bigger and bigger, and therefore more of them were moving via rail, in separate trains. We wanted to move them in separate trains with speed limitations, and so that we would never have a passing of two moving trains.

The Commission stopped us from doing that. I do not want to suggest that they were cavalier to safety, but what they said is, you can do that if you want, but you cannot charge anyone for it.

We have always been concerned with this. It goes back to the specifications for the casks and whether or not we felt that they could withstand the impact of a maximum credible accident. There is room for argument. But obviously, with the danger involved, we much prefer to use separate trains dedicated only to this.

Hopefully, we can make some progress on this, but it is an area of great sensitivity to us. It is awfully hard to replicate a maximum credible railroad accident. As the movement goes and the fuel cores become more voluminous and larger in size, it is obvious more and more of them have to move by rail and this is going to be a subject of continuing concern.

We do not have many small packages or mixed packages or mixed loads.

Senator EXON. Would any other member of the panel care to comment on this general subject? Mr. Johns?

Mr. JOHNS. Senator Exon, I would like to point out that the Nuclear Regulatory Commission has run extensive tests to assure that the container integrity will not be breached in a serious accident. These include tests where tractor semitrailers loaded with the cask, a nuclear cask, have been struck by a train at high speeds. The vehicle was destroyed, but the cask was not. The integrity of the cask was maintained.

That same cask was used on a tractor semitrailer which was run into a cement barrier at high speed. Again, the tractor semitrailer was demolished, but the integrity of the cask was maintained.

There has been extensive testing of the nuclear casks and also of the other containers used for the transportation of a variety of hazardous materials. The Department of Transportation and the shippers have extensive programs to insure that these containers can do the job.

Senator EXON. Are these containers, which are proving as safe as we can try and make them—and I am, once again, encouraged by what you are doing—also beginning to be used in other types of hazardous transportation? Frequently, and in fact two or three times a year now, we have a situation where there is a train derailment, for example, and hazardous waste or material goes up into the air, and communities are evacuated.

I assume that the containers that are being used and the ones that you described in the test programs are highly expensive, and are not functional or cannot be used for less hazardous materials than nuclear wastes?

Mr. JOHNS. That is correct. It would be unnecessary and impractical to utilize such containers for the very low-grade hazardous materials. For example, there are many hazardous materials that are moved to drugstores, hardware stores, grocery stores, and these are in containers that are designed to cope with the very minor hazards of those specific commodities.

So the containers have been rated by the Federal Government and the shippers according to the degree of hazard which is present.

Senator **EXON**. Well, Mr. Chairman, if none of the other members of the panel have any further comments, I appreciate their remarks in this area. I think this issue is one which we have a primary responsibility to examine as the oversight committee in this area, and I will be pursuing this overall safety matter when we get into more detail and discussions with the railroads.

And I compliment the members of your industry for the statements they have made here this morning, and evidently making some recognition with regard to the safety of the people who are actually moving this highly hazardous nuclear waste from point to point.

I have no further questions.

Senator **GORTON** [presiding]. Thank you.

I should like to thank the members of this panel for their enlightening testimony.

We will now go to panel number three: Mr. Cardillo, Mr. Harveson, Mr. Ford, and Ms. Holt. Unless you have made other arrangements, I will listen to your testimony in the order in which you were called and start with Mr. Cardillo.

STATEMENT OF ROBERT CARDILLO, SECRETARY-TREASURER, HAZARDOUS MATERIALS ADVISORY COUNCIL

Mr. **CARDILLO**. Senator, my name is Robert Cardillo. I work for Exxon Chemical Americas, a large chemical shipper located in Houston, Tex.

Senator **GORTON**. Excuse me, Mr. Cardillo.

I would like the noise level in the audience to subside to a certain extent so that we can hear the witness.

Please proceed.

Mr. **CARDILLO**. I am here representing the Hazardous Materials Advisory Council, and HMAC appreciates this opportunity to present its views on S. 1108. HMAC is a nonprofit organization with an office in Washington. Its members consist of approximately 250 corporations, firms, and associations involved in the shipment and transportation of hazardous materials and hazardous wastes.

HMAC is unique in this area since it brings together shippers, carriers, and container manufacturers and other organizations involved in this activity.

A little over 2 years ago, HMAC testified before this committee on S. 960, the Hazardous Materials Transportation Act of 1981, similar to the bill now being considered. At that time we advocated changes in the bill since the concept of consistent State and local regulation used throughout S. 960 and in the current bill was inadequate to address the proliferation of State and local regulations in this field.

S. 960 was never passed, due to fundamental differences between industry and State and local governments. On one side, industry pushed for uniformity of regulations and a more total Federal preemption of State and local activity. On the other side, State and local governments defended their authority to regulate hazardous materials without Federal intervention in order to protect their citizens.

As a result of this impasse, we established the coalition of industry and State and local government organizations which you have heard of previously. Much has been accomplished in this effort and the terms of discussion have become far more sophisticated and agreeable than the simple cries for preemption and uniformity which occurred back in 1981.

After over a year of meetings and one major conference, each side has come to a clearer understanding of the other's needs. This does not mean that the problem is solved, however. Although participants in the coalition have shown great willingness to be flexible on many issues, each side still has needs that must be addressed in Federal legislation.

Industry recognizes that training is needed for State and local enforcement and emergency response programs, and that there may be unique situations in which States and localities should be able to exercise regulatory authority in order to meet public safety requirements. We need to be assured, however, that such actions fit into a nationally uniform regulatory and enforcement scheme.

Industry needs to know that the regulations adopted actually promote safety. Federal legislation in this area must address the concerns of both sides. We believe that what is needed is a clear delineation of Federal, State, and local roles and responsibilities in insuring safety in the transportation of hazardous materials.

We think this will avoid both the ambiguities of the inconsistency doctrine and the rigidity of a narrow Federal preemption of all State and local rules. It will also tend to reduce the patchwork of different State and local regulations that hinder interstate commerce.

The situation exists now because current law does not adequately denote what each level of government should and should not do in regulating the movement of hazardous materials. The Hazardous Materials Transportation Act provides for preemption of inconsistent non-Federal laws and regulations, but it does not provide guidance as to what "inconsistency" means.

As you know, many inconsistency rulings have been coming out lately. The bill being considered by this committee might perpetuate part of that situation, since it still uses the term "inconsistent." A clear legislative delineation of Federal, State, and local roles and responsibilities would go a long way toward solving the difficulties we are experiencing.

Based upon the work of our coalition, I am convinced that this can be done to the satisfaction of all parties. There is a general agreement that certain areas of regulation must be exclusively under Federal domain. These include classification and definition of hazardous materials, equipment and packaging specifications.[1]

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[1] See prepared statement for full text.

And other areas can be reserved for the States if they are operated under Federal specifications for arriving at some of those rules.

In general, HMAC opposes prenotification. We feel that it is relatively ineffective and we would like to substitute the idea of preplanning where States and localities can get at information on where and what kind of hazardous materials pass through their areas and take adequate steps to provide emergency response in those areas. In certain very high-risk shipments, perhaps prenotification can be narrowly used.

In conclusion, we are confident that practical, equitable, and mutually acceptable solutions exist to the problems facing industry and State and local governments in this area. While the proposed legislation makes a substantial step toward these solutions, we do not feel that it fully addresses the problem at hand. An essential part of any national regulatory scheme is a clear definition of each level of government's responsibilities in regulating the movement of hazardous materials.

Thank you, sir.

[The statement follows:]

STATEMENT OF ROBERT CARDILLO, HAZARDOUS MATERIALS ADVISORY COUNCIL

I am Robert Cardillo, and I am here representing the Hazardous Materials Advisory Council, which I shall refer to as "HMAC". HMAC appreciates this opportunity to present its views on Senate Bill 1108.

HMAC is a non-profit organization with an office in Washington, D.C. Its membership consists of approximately 250 corporations, firms and associations involved in the shipment and transportation of hazardous materials and hazardous wastes which are subject to the provisions of the Hazardous Materials Transportation Act of 1974, the Resource Conservation and Recovery Act, and similar federal laws. HMAC is the only national organization devoted to promoting safety in the domestic and international transportation of hazardous materials which represents all modes of transportation, shippers of varying size, container manufacturers, and carrier and shipper associations.

A little over two years ago, HMAC testified before this committee on S. 960, the Hazardous Materials Transportation Act Amendments of 1981, similar to the bill being considered now. At that time, we advocated changes in the bill, since the concept of "consistent" state and local regulations used throughout S. 960 (and in the current bill) was (and still is) inadequate to address the proliferation of state and local regulations in this field.

S. 960 was never passed, due to fundamental differences between industry and state and local governments. On one side, industry pushed for uniformity of regulations and total federal preemption of state and local activity. On the other, state and local governments defended their authority to regulate hazardous materials transportation without federal intervention, in order to protect their constituents. As a result of this impasse, HMAC established a coalition of industry and state and local government organizations to try to find common ground. Much has been accomplished in this effort, and the terms of discussion have become far more sophisticated than the simple cries for preemption and uniformity of two years ago. After over a year of meetings and one major conference, each side has come to a clearer understanding of the other's needs.

This does not mean, however, that the problem is solved. Although participants in the coalition have shown great willingness to be flexible on many issues, each side still has needs that must be addressed in federal legislation. Industry recognizes that training is needed for state and local enforcement and emergency response programs, and that there may be unique situations in which states and localities should be able to exercise regulatory authority in order to meet public safety needs. We need to be assured, however, that such action fits into a nationally uniform regulatory and enforcement scheme. Industry also needs to know that the regulations adopted actually promote safety. Federal legislation in this area must address the concerns of both sides.

What is needed is a clear delineation of federal, state and local roles and responsibilities in ensuring safety in the transportation of hazardous materials. Without such a provision, industry will still face a patchwork of differing state and local regulations. This makes compliance difficult, burdens interstate commerce, and can actually contribute to a decrease, not an increase, in safety. We have already seen a case where a state curfew caused vehicles carrying liquefied energy gases to park at the state boundary until rush hour was over, actually causing greater risk to the citizens of neighboring states. Curfews, bans, prenotification requirements and routing restrictions can all have the detrimental effect of simply transferring the risk involved in hazardous materials transportation onto neighboring jurisdictions, adversely affecting the overall level of public safety.

This situation exists because current law does not adequately denote what each level of government should and should not do in regulating the movement of hazardous materials. The Hazardous Materials Transportation Act provides for preemption of "inconsistent" non-federal laws and regulations, but does not provide guidance as to what "consistency" is. The bill being considered by this committee would perpetuate this situation, authorizing grants for states to enforce federal and "consistent" state rules and regulations, but again, not clarifying what a "consistent" regulation is.

A clear legislative delineation of federal, state and local roles and responsibilities would go a long way toward solving the difficulties we are experiencing. Based on the work of our coalition, I am convinced that this can be done to the satisfaction of all parties. There is general agreement that certain areas of regulation must be exclusively under federal domain. These include, but are not limited to, classification and definition of hazardous materials, equipment and packaging specifications, requirements for written accident reporting, qualifications and training standards for vehicle operators, and hazard communication requirements such as placards, labels and shipping papers. This not only eases interstate commerce, but also promotes safety by eliminating possible confusion for emergency response personnel. Other areas, such as highway routing, can be handled by states and localities, provided they conform to strict performance standards established by federal regulation. Such standards should include a requirement that routing schemes be developed by a task force of all affected parties, including state and local enforcement and response agencies, shippers and carriers. Federal performance standards for such activity would be far more effective and practical than a general requirement for consultation among all parties, as in Subsection 122 of the present bill. We would be willing to discuss these concepts in more detail with your staff.

In general, HMAC opposes prenotification of hazardous materials shipments as a means of protecting the public. Such requirements can impose a substantial burden on commerce without increasing an agency's ability to respond in the case of an accident. A recent study, conducted by the Puget Sound Council of Governments under contract to DOT, concluded that prenotification would be effective only in cases of extremely high-risk shipments which travel infrequently. A far better alternative would be for state, regional or local agencies to consult with local industries to determine the kinds of materials which pass through their area, the routes used, and the frequency of shipment. Again, the task force I just described would be the ideal forum for this kind of work. Based on the work of this group, a community can establish a hazardous materials "pre-plan", to allow the most effective use of the emergency response resources. Industry would be more than willing to assist in such a venture.

In conclusion, we are confident that practical, equitable and mutually acceptable solutions exist to the problems facing industry and state and local governments in this area. While the proposed legislation makes a substantial step toward these solutions, it does not fully address the problem at hand. An essential part of any national regulatory scheme is a clear definition of each level of government's responsibilities in regulating the movement of hazardous materials. I would be happy to answer any questions you may have.

[The following information was subsequently received for the record:]

HAZARDOUS MATERIALS ADVISORY COUNCIL,
Washington, D.C., September 6, 1983.

MS. KAREN BORLAUG PHILLIPS,
U.S. Senate, Committee on Commerce, Science and Transportation, Washington, D.C.

DEAR KAREN: In response to Senator Danforth's letter of August 5, I would like to submit the following answers to Committee questions for the record.

QUESTIONS OF THE MAJORITY

Question. What in your view is the single most effective thing Congress can do to improve emergency response and compliance training related to the transportation of hazardous materials?

Answer. The committee should be aware that there are three areas of training needed for the safe transportation of hazardous materials: compliance, enforcement and emergency response. These areas are quite different from each other, and the training is mostly performed by different groups. Compliance training is performed by industry for industry, in order to meet regulatory standards. The most effective action Congress can take to increase the level of compliance is to increase the level of enforcement, making the risk of non-compliance greater.

Emergency response training is a different matter, and can be helped by a modest grant program to set up training for local and regional emergency forces.

Question. Do you believe more emphasis should be placed on enforcement of the federal hazardous materials transportation regulations, or is the current system sufficient?

Answer. As we stated above, more emphasis on enforcement of federal regulations is needed. The proper delineation of local, state and federal enforcement responsibilities needs to be clearly established.

QUESTIONS OF THE MINORITY

Question. Concern continues to be expressed about inadequate enforcement and emergency response training, a concern to which S. 1108 attempts to respond. As an important representative of the various private sector hazardous materials interest groups, how do you feel this concern can best be addressed? What role do you believe the Federal Government—and particularly the Department of Transportation and the Federal Emergency Management Agency—should play in training activities? To what extent are the states and localities involved in training efforts? To what extent is your group involved in coordinating training activities? Are there ways in which the private sector can and should become more involved?

Answer. The federal government, specifically the Department of Transportation, should take the lead in organizing and strengthening local, regional and state enforcement and emergency response planning activities. We feel strong involvement by the Federal Emergency Management Agency is inappropriate. For years, DOT has been the central agency involved in the regulation of hazardous materials transportation. Previous experience leads us to believe that interagency programs are more complicated and inefficient than those with one lead agency, and that there is less accountability in the administration of such programs. Because of DOT's experience in the area and familiarity to the parties involved, we feel it should be the lead agency.

Training in enforcement and emergency response can be assisted by a modest grant program. The federal government's role should be to provide guidance and standards, particularly in enforcement training, so regulatory interpretation does not vary from jurisdiction to jurisdiction. Already, such cases are occurring in states which have adopted and are enforcing federal hazardous materials regulations.

Currently, state and local governments, for the most part, are not as involved in enforcement and emergency response training as they should be. A program to provide funds for enforcement and emergency response training should address this problem.

HMAC and other private sector groups are involved in a wide variety of training activities. We sponsor compliance training courses and seminars for industry. In addition, many companies and associations voluntarily provide emergency response training to state, local and regional agencies. For example, the Association of American Railroads' Bureau of Explosives, as well as individual railroads, have long had programs to train firefighters in hazardous materials emergency response. Industry plants have emergency response teams which often train local government personnel. And programs such as Texas A & M's hazardous materials emergency response courses are assisted by industry contributions and participation.

This private sector involvement can be increased and coordinated through promotion of task forces, whereby industry and government agencies meet and coordinate their efforts in a cooperative manner.

Question. In your testimony, you indicate opposition to the concept of prenotification, although you recognize the advisability of a task force to provide the necessary information to states and localities about hazardous materials shipments. To what extent could the current data collection system be improved to provide the states and localities with access to better information in this regard? Has the Hazardous

Materials Advisory Council taken, or does it envision taking, steps to improve the information that is currently available?

Answer. The best approach to emergency response planning is the one used by the Puget Sound Council of Governments in its 1981 Hazardous Materials Study, performed under contract to DOT. In that project, industry and state and local governments worked together to find out what materials were present in the region, and how and in what amounts they moved.

We recommend this approach in other cities and regions. It is important to realize that traffic flow patterns and the risks they present can only be determined at a local or regional level. Currently, there is no national traffic flow data system for hazardous materials transportation by all modes, nor is one needed. Risk analysis for hazardous materials transportation depends on specifics such as proximity of population areas, mode of transport, accident rates over particular routes, as well as a host of other factors. This information is inherently local or regional, and there should be no attempt to come up with a national data collection system. The only national data bank existing today is one covering hazardous materials incidents and accidents, which may be useful in locating areas of high concern.

Again, the task force approach of the Puget Sound Council of Governments is most effective, allowing industry to provide its considerable expertise and information as a partner in the effort. Any approach which excludes industry not only robs itself of this expertise, but also tends to be more adversarial, and thus less effective.

Very truly yours,

Robert M. Cardillo,
Secretary-Treasurer, HMAC,
Senior Associate, Environmental Affairs Department,
Exxon Chemical Americas.

Senator Gorton. Thank you.

Mr. Harveson, we will proceed to you at this point.

STATEMENT OF CLIFFORD J. HARVISON, MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS, INC.

Mr. Harvison. Thank you, Mr. Chairman, and good morning.

My name is Clifford Harvison and I am managing director of National Tank Truck Carriers, Inc., a trade association of over 200 companies specializing in for-hire transportation of bulk commodities throughout the 48 continental United States.

As bulk carriers who are extensively involved in the transportation of hazardous materials, I am pleased to appear this morning in support of the objectives and concepts outlined by the members of the Hazardous Materials Transportation Coalition, and urge that positive consideration be given to blending those objectives and concepts into S. 1108.

As you well recognize, the presence of hazardous materials throughout our lifestyle is gaining increased public scrutiny and it is only natural that regulatory entities at all levels of government focus on the transportation segment of the hazardous materials chain, for it is only in transportation that large quantities of these materials are placed into the public domain.

As a representative of the carrier community, I submit that our record, just like that of the railroads, with respect to safety is truly outstanding. However, of course, that is not necessarily germane to the interest of this committee, since you appear at this time to be interested in what happens when things go wrong, as opposed to what happens when things go right.

Our association believes that the coalition holds the best opportunity for success in building consensus in three broad areas: First, the promotion of needed uniformity in the technical aspects of hazardous materials regulation: second, the creation of a legislatively sanctioned format for resolving disputes in application of the nontechnical side of regulation, without constantly pounding on the courthouse door; and third, the formulation of a method of communicating to State and local governments necessary information and funds so that emergency response techniques might be coordinated and fortified.

And allow me to briefly elaborate on each. There are certain aspects of regulation which must be uniform and immune from alteration by State and local government, unless accomplished through Federal rulemaking. Such items as vehicle marking, container construction, and the paperwork that accompanies shipments, and commodity classification must be uniform.

Since the mere exercise of regulation is meaningless without enforcement, the sheer volume of hazardous materials shipments also dictates the reality that State and local governments should be vested with prime operational enforcement responsibility. State and local officials know their turn and, once effectively trained in a set of uniform Federal regulations, would be better positioned to enforce. NTTC supports the use of highway trust fund moneys to implement training and enforcement programs.

With regard to the nontechnical aspects of regulation, such as routing, time of day restrictions, prenotification of shipments, et cetera, we support the concept of federally developed performance standards and/or local task forces to assure that local concerns and the need for continuity in transportation are balanced. This must be accomplished to avoid ill-considered unilateral actions by one jurisdiction which are imposed without regard to the impact on the citizens of neighboring jurisdictions and the carriers and the shippers we serve.

For example, last fall the city of New York began enforcement of a system of outright bans, routings, curfews, and permits. Without elaborating on the details of the city's actions, suffice it to say that those rules, combined with the city's core position in the northeast transportation corridor, have had the net effect of the New York City Council imposing burdens on the States of New Jersey and Connecticut and scores of other New York State communities without their knowledge or acquiescence.

And I might add that in the interim we have been most successful in working with the very excellent staff of the city of New York in ameliorating some of the problems. However, I do want to emphasize that substantial problems with regard to those regulations remain.

Such unilateral actions do little more than place an unfair and disproportionate share of hazardous materials transportation on the backs of those who may least be prepared to cope with emergencies. Such actions can and do lead to retaliatory actions by adjoining communities and help foster illegal operations within the trucking industry itself.

Mr. Chairman, the tank truck industry recognizes that, regardless of regulatory uniformity and cooperation, accidents will happen, and the preponderant burden for response and remedial action will fall on State and local governments. For this very basic reason, we support the mandated development and promulgation of transportation data to state and local officials.

We support the concept of a basic registration program for all carriers, shippers, and container manufacturers, including the name of the party, its point of contact, and a general description of its hazardous materials operation. The physical and administrative capabilities of local emergency response units must be upgraded.

We support the concept of fair and equitable fees on all parties in the hazardous materials transportation community, to be applied nationally and in lieu of local fee structures for this purpose. Again, local fees have the same effect as local regulations: They accomplish little more than provoking retaliation, disarray, and the enrichment of the illegal operator.

Last, I stress that the present Hazardous Materials Transportation Act must be amended to accomplish these purposes. As one who has paid more than his share of dues and legal fees and expenses in considerable litigation before the Federal courts, I doubt that you could find any two members of the entire judiciary who would or could agree on either the direction or implementation of congressional intent espoused in the 1974 legislation.

Unlike 1974, the coalition has come to you with a proposed system, not just a series of related amendments. We urge enactment of the coalition's concepts and objectives.

Thank you.

[The following information was subsequently received for the record:]

Questions of the Committee and the Answers Thereto

Question. Presently, NTTC members are faced with the fact that an increasing number of communities and political jurisdictions are imposing fee and permit systems applicable to motor carriers of hazardous materials. Not only are such schemes burdensome from an economic standpoint, they threaten the continuity of transportation, impose unforeseen liabilities on carriers, and "overload" the transportation networks of adjoining communities (as carriers seek to avoid the "taxing" jurisdiction).

Answer. We believe that a "risk-oriented" national fee system—imposed equitably on carriers, shippers and hazardous materials container manufacturers should be imposed. The proceeds of such a system should be used to upgrade the emergency response capabilities of non-Federal jurisdictions, particularly in those communities contiguous to major highway and rail routes. Implementation of such a system should also contain a legislative preemption against any community, receiving funds from the fee structure, from imposing any similar fee and permit system. The legislative preemption should not apply, directly, to communities not receiving funds, but such communities should bear some legislatively-mandated "burden of proof" before any such fee or permit system is implemented.

Question. NTTC believes that the ". . . single most effective thing the Congress could do to improve hazardous materials regulation" would be to make individual States responsible for "operational" enforcement.

Presently, DOT regulations, regarding hazardous materials transportation, fall into two general categories—technical and operational—and enforcement is an admixture of Federal and State efforts. NTTC holds that "technical and operational" regulations should be written and revised, solely, by the Federal government through the rule-making process (wherein the States and local communities can and should participate) and that the "final product" be mandated, in all cases, except where truly unique local circumstances exist and can be documented before DOT.

Answer. Enforcement of the technical aspect of the regulations (container standards, commodity classifications, etc.) should be enforced, solely, by the Federal government. Conversely, enforcement of the operational regulations should go to the States. Such transition should follow a suitable "phase-in" period, wherein Highway Trust Fund moneys are used to implement training and communication capabilities.

Presently, we believe that Section 402 of the Surface Transportation Assistance Act of 1982 provides the appropriate "legislative funnel" for such a program.

NTTC believes strongly that there can be no viable regulatory program without effective enforcement of nationally uniform rules. Increasing public concern over transportation safety—particularly with regard to the movement of hazardous materials—underscores the fact that DOT's Bureau of Motor Carrier Safety does not have (nor could be expected to have) the resources to enforce effectively. Properly trained State enforcement personnel, however, "know their turf" and can do a better and more effective job.

Most importantly, this program should be coupled with mandatory Federal registration of all hazardous materials carriers and shippers. One cannot enforce unless you "know who the players are." EPA implemented this concept with regard to transporters of hazardous wastes. Presently, this ability is discretionary within the Hazardous Materials Transportation Act of 1974. It should be made mandatory.

Senator GORTON. Thank you, Mr. Harvison.

Because our Senator Ford wishes to introduce this Senator Ford, we will pass him over at this point and hear from Ms. Holt.

STATEMENT OF MARY SHERWOOD HOLT, REPRESENTING THE NATIONAL LEAGUE OF CITIES AND THE U.S. CONFERENCE OF MAYORS

Ms. HOLT. Good morning. I am Mary Sherwood Holt. I am a member of the city council of the city of Newport News, Va., and I am here this morning representing not only the National League of Cities, as my written testimony will say, but also the U.S. Conference of Mayors. Both of these organizations, as I am sure you know, do indeed represent the cities across the Nation.

You have copies of my testimony. I am not going to read it.

Senator GORTON. It will be included in the record.

Ms. HOLT. Thank you, sir.

I would like to give you a few examples and to tell you what it is like down there on the local level. Earlier, Senator Danforth had asked what the capacity of State and local governments actually is in enforcing and regulating transportation of hazardous materials, and I can tell you.

My city is small as cities across this Nation go. It is small as the world goes, 150,000 people in Newport News. We have an annual operating budget of $130 million, a lot of money for us, a drop in the bucket for some other folks. Nevertheless, out of that annual budget of $130 million we spend a half a million dollars a year on a hazardous materials team in our city. It is a lot of money in proportion.

We feel that we need it. My city does have some needs that others might not, which have made us aware of these. We have a shipbuilding industry in our city which does build nuclear supercarriers, among other nuclear ships. We do have a nuclear power plant across the James River in Surry County in Virginia, and so we are aware particularly of nuclear wastes.

However, most of the toxic and hazardous wastes are not necessarily nuclear. There are many other forms of toxic and dangerous materials.

All of these materials do not come to our city as a destination. Across the James River from us is the Port of Portsmouth, which certainly on the east coast exports more hazardous materials than almost any other port in this Nation. To get from the interstate to Portsmouth, you come through the urban streets of Newport News.

So we do have problems, for hazardous materials in our city and coming through.

As someone earlier said, the risks are low, but the potential dangers of such accidents are high, and the people who are going to be hurt are the citizens of our cities. Certainly, they are citizens of our States and of the United States also, but they live in cities, and traditionally it is cities that have been responsible for public safety enforcement, and we understand it. That is why we spend a half a million dollars a year on our hazardous materials team.

Anyway, I asked the fire department, which is the lead agency in this, to give me an example to tell you folks today. He said, well, Ms. Holt, I will. It is not recent. Eight months ago there was a potential disaster, and he gave the location—half a mile from my house. So it got my attention, I can assure you.

In this case it was a railroad accident. There was a derailment and two tanks of butane gas were derailed. The real problem with the derailment was one rail snapped up and came within inches of piercing one of the butane tanks, which would have meant the whole area would have gone up like a cigarette lighter. And it was in a highly dense area of our city; 4,000 people were in the immediate vicinity and were in great danger of fire and of explosion.

One of the interesting things about the accident is that we had a hard time getting there. The railroad's security people did not want our hazardous response team to come, because they do not like to talk about derailments. So our police had to go and convince them to let the hazardous materials team in.

But the risk was there. The cost is high. You cannot expect all localities to have the kind of a team that the city of Newport News does. They simply cannot afford it.

We go, our hazardous materials team for Newport News goes, all over the State. Why all over the State? Because the Commonwealth of Virginia has one person and one vehicle to cover the entire Commonwealth in dealing with these accidents. So ours and the other one in the State do a lot of travel.

It gets kind of discouraging. A month ago we went over to York County where there had been a truck acid spill. We cleaned it up and took care of it. Our only thanks was a comment by the fire chief in York County criticizing the city of Newport News for taking 23 minutes to get there. That gets kind of discouraging.

We do wish there were more funding, more organization and coalition between the Federal, State, and the locals to take care of this, which is indeed a national and a State and a local need.

I will repeat just once more that a lot of the hazardous material transportation is through our city. I also asked the deputy police chief, who oversees hazardous materials, what he considers the major problem. He says he really feels that 80 percent of the hazardous materials that travel through Newport News are not reported.

As others have indicated, we would like to have a hand in the routing. Certain types we can escort to reduce the risk of traffic or highway accidents, and that would be helpful.

I do support, and indeed all of us, the National League of Cities, do support what the two gentlemen before me and in an earlier panel said in supporting the coalition and the recommendations of the coalition. This group has worked together very hard to come up with these suggestions. We feel it is an improvement over the legislation you are looking at, not because there is anything wrong with the legislation you are looking at, but it strengthens it in calling for uniformity of classifications and in funding.

Thank you.

[The statement follows:]

Statement of Mary Sherwood Holt, Council Member, City of Newport News, Va.

Good morning. My name is Mary Sherwood Holt. I am a member of the Newport News City Council, and a member of NLC's Transportation and Communications Steering Committee.

I am here this morning on behalf of the National League of Cities, an organization representing directly and indirectly 15,000 of the nation's cities. Our members range from those as small as Scotland Neck, North Carolina, to as large as New York City.

I am grateful for the opportunity to testify before you on the hazardous materials transportation title of S. 1108, and I am particularly pleased that the committee shares our concerns for improving the program.

For the nation's cities, the transportation of hazardous materials presents questions of public health and safety. At any given moment, there are perhaps 100,000 trucks carrying hazardous materials over local, state, and interstate highways—nearly one truck out of 10. Nearly one out of every 23 railcars carries hazardous materials.

Traditionally, states and local governments have borne the responsibility under the Constitution to protect the citizens of their communities. Consequently, health, fire, traffic, and safety codes have been local, not federal responsibilities. At the same time, the materials in question have been transported in interestate commerce, thereby creating a federal role and responsibility.

For elected local officials, the issue resolves itself into a question of risk: who bears it and thus has the most reasonable rights to take actions to reduce it? When an accident or spill occurs, it is the city fire department, police department, and emergency rescue service which are almost inevitably the only level of government immediately able to deploy personnel and equipment.

Similarly, our citizens expect local elected officials to bear the responsibility for protecting their health and safety. Traffic control, fire, emergency, and medical responses are city burdens which the federal government has not expressed a willingness to assume. In the absence of a more direct federal role, local officials have taken actions suited to local circumstances in order to save lives and millions of dollars worth of property.

Moreover, despite their relative statistical safety compared to say motorcycle accidents, hazardous materials have distinctive characteristics posing varying levels of danger to local communities. In the last year, we have seen some of the havoc they can wreak, as well as fear they can sow.

On March 30, 1982, 10,000 gallons of toxic formaldehyde from a vandalized railcar cascaded into the Russian River in northern California. The spill contaminated the drinking water of 250,000 people in communities as distant as 120 miles away.

Liquified petroleum gas accidents involve fireball dangers. A typical tanker explosion can create a fireball of about 420 feet in diameter. An LPG accident near Eagle Pass, Texas, in 1975 killed 16 people and injured 35. A year earlier, a similar accident in St. Paul, Minnesota, killed four people and demolished large sections of three apartment buildings. That same year, a railcar puncture led to an explosion over an area one-half by three quarters of a mile. It resulted in seven deaths and 349 injuries and caused $24 million in property damage over a 20-block area.

The danger in cities is, if anything, exacerbated, for the juxtaposition of hazardous materials upon a relatively densely populated area dramatically increases risk. Not only are more lives jeopardized in the event of an accident—both immediately, and over the long term for latent toxic chemicals—but also evacuation, emergency response, and remedial actions are all made many times more complicated by the congestion of urban centers.

In our view, as presently constituted, we believe that the federal Department of Transportation is unable to carry out effectively its role as envisioned in this committee's report, S. Rept. 97–99, to ensure a prime federal role in ensuring better state and local capacity to enforce federal regulations and to develop emergency response capacity. It is in the absence of such a role, despite what we believe to be excellent efforts, that cities have been forced to act.

This concern is especially important for these cities which derive no direct economic benefit from the transportation of hazardous materials. For these cities, the burden of planning and diverting scarce revenue to meet a potential threat to their citizens is especially onerous.

And, it is in the absence of sufficient enforcement and development of emergency response capacity that cities have felt compelled to react. Their actions—which require compliance from shippers and carriers—have inevitably created conflicts: for their actions increase compliance costs by requiring better driver training, safer equipment, better notification, escorting, time of day restrictions, alternate routing, and so forth.

These actions have been understandable. Local officials, faced with the prospect of enacting local tax increases to create hazardous materials response plans to protect their citizens and environment, have an easy course. to avoid risks and local costs, they may take any number of actions to obstruct the transportation of materials through their jurisdiction. Politically, this method creates the greatest single benefit for the city elected official.

Because we bear the ultimate health and safety responsibility, we must then, have the fiscal resources to acquire this capacity. Without it, we will have little choice but to erect such barriers.

My city of Newport News, for example, is host to Tenneco's shipyard with and extensive nuclear presence, VEPCO's Surry Nuclear power plant, and numerous hazardous materials transported by rail and truck to the port facilities.

As I wrote to Governor Robb's Office recently: "Virginia currently has a hazardous materials program located in the State Office of Emergency and Energy Services (OEES), and considering the lack of support from both state and federal levels, this unit has done a remarkably good job attending to serious hazardous materials accidents. No matter how hardworking and conscientious, however, an office with one man and one vehicle (a converted camper!) cannot cover the Commonwealth. The localities are responding, but should not be expected to carry the burden alone, nor can most of Virginia's cities afford to train and equip an effective HAZMAT unit."

We have raised local taxes on our own citizens to meet nearly $437,000 of annual costs associated with our program. But citizens are questioning why they should pay that much for entertaining such risks, while others are apprehensive that the amount raised is simply inadequate.

Logically, of course, an endless progression of conflicting regulations would make compliance impossible for any shipper or carrier. What is needed is a better federal system. Such a system should require restructuring of appropriate federal, state, and local roles.

I say this knowing that some will attack our position from both sides. Some will argue that these concepts force industry to give up too much without gaining an adequate return. Others will offer the opposite.

Our Transportation Steering Committee has followed the progress of the industry-public hazardous materials coalition closely. Our 49 state municipal leagues have been kept apprised not only of NLC's supportive policy changes, but of the recommendations they have endorsed. The support is widespread.

In our view, the working group's recommendations as outlined to you earlier this morning mark a comprehensive program of emergency response, training, uniform laws, and financing. NLC believes that the recommendations would make improvements in your legislation consistent with your intent.

There is one recommendation the coalition has agreed upon which Mr. Myers did not include in his testimony. It is one which is already happening in some places, for it is eminently sensible.

We believe that coalitions should be created at the state and local level—and that the creation of such coalitions should be a pre-condition to the eligibility for any assistance from the trust fund. Just getting the various interests together around a table could, in many instances, resolve many of the conflicts which heretofore have become bogged down in inconsistency determinations and litigation.

Perhaps, more importantly, instead of working from adversarial positions, these coalitions could result in creative solutions to unique local or regional problems. These coalitions, for instance, should serve an important role in determining how to meet federal performance standards. Similarly, they will be critical to the development of state and regional enforcement and emergency response planning. Any incentives which can be created through your legislation to increase coordination at all levels of government and with industry would be appreciated.

While these coalitions will not be the be all and end all, we view them as one of the most significant recommendations of the coalition and commend it to you for your support.

[The following information was subsequently received for the record:]

QUESTION OF THE MAJORITY AND THE ANSWERS THERETO

Question. What do you believe is the appropriate division of responsibilities between FEMA and DOT in the various aspects of hazardous materials transportation?

Answer. NLC believes that the Department of Transportation should continue to have primary responsibility for all aspects of hazardous materials transportation. Included in that role should be coordination of FEMA and EPA.

FEMA has not been involved with our organization or with our members on this issue. It's only involvement has been with regard to evacuation planning for nuclear war—a program which our members feel has been wasteful, inefficient, and detrimental to realistic emergency response needs of American cities.

Question. What do you believe is the single most effective action Congress could take to improve the safety of hazardous materials transportation?

Answer. NLC believes that the single most effective action Congress could take to improve the safety of hazardous materials transportation would be to create and ensure a funding source not subject to appropriations for emergency response programs. Emergency response is a uniquely local need and responsibility, one which most cities are ill-equipped to handle today.

Question. In your view, how can we *realistically* achieve uniformity in hazardous materials transportation regulations?

Answer. In our view, the nation can realistically achieve uniformity in hazardous materials transportation regulations by: Adopting performance standards for state and local governments; assuring good enforcement of all regulations; and ensuring that there is a permanent funding mechanism to provide for emergency response capacity.

It is clear, and there is no disagreement within the coalition in which NLC has played a lead role, that the U.S. Department of Transportation has insufficient resources to provide for an effective national hazardous materials program. Its personnel levels are far below what Congress has authorized. In the absence of its ability to assume a leardership role as intended by Congress, terrific unfunded liabilities and risks have fallen upon cities. To expect cities to bear the financial burden, responsibility, and political risk of protecting the health and safety of their citizens and their proprerty while denying those same cities the right to regulate that risk in a manner consistent with their own unique characteristics would be unreasonable.

Thus, in our view, the Coalition proposals provide for uniformity, but in a manner consistent with municipal rights and responsibilities.

Senator **GORTON**. Thank you very much.

Senator Wendell Ford unfortunately will not be able to be here, and so, Senator Ford, we will go to you, and first ask whether or not you are related.

STATEMENT OF ED FORD, KENTUCKY STATE SENATOR, REPRESENTING THE NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. **FORD**. Thank you, Senator.

We are probably—or I am probably much safer because Senator Ford did not introduce me. I do not know what he was going to say, and I never know.

Senator **GORTON**. Neither do we.

Mr. **FORD**. We claim kin when it will help us both and we deny it when it will hurt us both politically.

The entire Commonwealth of Kentucky has asked that question many times, as to whether we are related or not. It has never been answered and may never be.

But I am very pleased and honored to address you today on the issue of transportation of hazardous materials. This is an issue that I personally have struggled with over the last few years, and I appreciate the opportunity today to come and share with you some of my experiences, some of my insights, and some of the conclusions that I have drawn.

And I am also testifying today on behalf of the National Conference of State Legislatures, which represents our Nation's 7,500 State lawmakers. NCSL's long-standing interest in the subject has led to the adoption of a policy position which serves as a framework for my comments today.

First, I can assure you that it is without question a complicated and confusing area. It includes issues that evoke strong feelings at all levels, issues such as Federal preemption, States rights, home rule, local control, public safety, and the burdens on interstate commerce.

From a State perspective, I believe the following points to be a reasonable summary of the issues involved in the regulation of the transportation of hazardous materials:

First, there appears to be a general awareness of the need for national consistency in the requirements for safety equipment, packaging, placarding, manifests, et cetera, because of the undue burden that could result on interstate transporters from numerous variations in such requirements if they were imposed by various levels of government.

No. 2, although regulation of hazardous materials transport has been a Federal program, the burden of enforcement of Federal hazardous material regulations has fallen to the States. In my opinion, the States are the most effective and efficient mechanism for such enforcement. However, if States are to do a comprehensive and effective job, Federal support for training and education programs is needed.

While bearing the responsibility for enforcement of the Federal programs, States and local governments should retain the authority to develop additional specific requirements that they find necessary to properly safeguard the public. State and local governments know best what their capabilities are and where their problem areas are and what provisions for routing, prenotification, and general information will allow them to effectively carry out their responsibilities. Although guidelines in this area may be necessary, local authority to deal with specific safety issues must remain intact.

There is a need to classify materials as to their degree of hazard. To me this may be the most important missing ingredient. Hazardous materials as defined today cover such a broad spectrum of materials that substances of low hazard and acutely hazardous substances must meet the same requirements.

Although notification of all shipments would certainly be burdensome to shippers, States should be notified of extremely hazardous materials that will be transported through their States, so that they can properly prepare themselves in case of an accident. It is my understanding that this is probably done some on a voluntary basis now. I believe it should be required.

Now, the items I have just listed are all ultimately concerned with preventing accidents. However, States must also address the issue of emergency response when accidents do occur. In Kentucky, the division of hazardous materials in the State fire marshal's office has 15 people in the field and 2 in the State office, and they respond to at least one hazardous materials accident every day.

The maximum length of time that it would take to get to the most remote area in the State would be 1½ hours. Normally we are talking about one-half hour. The field and State offices are in radio communication with the State police, and they can give advice and direction even before they arrive on the scene.

This program has proved to be an exemplary one for our State, and we do not believe that all States are quite as fortunate. Proper training and education are essential for effective emergency response programs. State programs need additional financial and technical assistance in this area.

Finally, I would like to commend Senator Danforth for his initiative in introducing S. 1108 as it pertains to the transportation of hazardous materials. From a State perspective, it recognizes two very important needs, one being the need for financial assistance to the States for enforcement purposes, and the other being the need for understand to State and local governments for emergency response planning.

However, NCSL believes that S. 1108 should go farther toward addressing and clarifying the respective roles of the Federal, State, and local governments. Specifically, NCSL recommends that S. 1108 be amended to incorporate the following concepts:

That the role of the DOT should be more clearly defined. Specifically, DOT should be mandated to promulgate technical standards and criteria for the manufacture of hazardous materials containers, classification and definition, description, packaging, marketing, labeling, documentation, and placarding of equipment for transportation. These requirements should be nationally uniform and DOT should be directed to assume full responsibility.

We also ask that DOT be directed to promulgate performance standards for hazardous materials shipments in commerce. This provision recognizes that unique local circumstances may justify the promulgation of certain state and local regulations. Such regulations should be allowed to stand if they meet the performance standards and do not impose an undue burden on commerce.

We also believe that States are the proper level of government to assure the comprehensive enforcement of hazardous materials transportation regulations for shipments in commerce. However, if the Federal Government shifts its responsibility to the States, there must be an assurance of adequate and predictable financial assistance to support training and enforcement.

And lastly, we ask the Federal Government to assure that adequate and predictable funding is available for the development of State and local emergency response programs and for the training of emergency response personnel. Such funding should alleviate the necessity of imposing individual State and local fees.

In my opinion, a lot of ground has been covered in attempting to define the legitimate roles of the Federal, State, and local governments, but defining the role is only the beginning. How we fund and implement these roles will eventually determine how successful we will be in properly handling in the safest possible manner the materials our society has come to depend upon.

We have a lot of work to do ahead, and I thank you for the opportunity to present these views today.

[The statement follows:]

STATEMENT OF ED FORD, STATE SENATOR OF KENTUCKY, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

I am very pleased and honored to address you today on the issue of transportation of hazardous materials. This is an issue that I personally have struggled with over the last few years and I appreciate the opportunity to share with you some of my experiences, insights, and conclusions.

I am also testifying today on behalf of the National Conference of State Legislatures (NCSL) which represents our nations's 7500 state lawmakers. NCSL's long standing interest in this subject has led to the adoption of a policy position which serves as a framework for my comments today.

First of all, I can assure you that it is without question a complicated and confusing area. It includes issues that evoke strong feelings at all levels; issues such as federal preemption, states' rights, home rule and local control, public safety, and burdens on interstate commerce.

I was fortunate enough to be able to attend a meeting in Denver in September of last year, which was sponsored by NCSL in cooperation with six other state local and industry associations and the U.S. Department of Transportation. More than 130 individuals interested in the issue of hazardous material transporation were present including state legislators, state agency, county and city officials, representatives of the affected industries including shippers, transporters, and container manufactures, and representatives of the federal department of transportation, materials transportation bureau.

The purpose of the meeting was for the various interests to share their concerns and to find some common ground upon which to pursue needed improvements in the regulation of the transportation of hazardous materials. This meeting was, I believe, a beginning. Not every interset was willing to concede points on its particular "wish list" as to how regulation should proceed. Industry opposed state and local regulation as too diverse and too burdensome. State and local officials opposed preemption on the basis of the existence of unique safety problems in localized areas that could be addressed only from the local level. A copy of the Conference Proceedings is attached.

However, time has borne out that these discussions, and many that I am sure preceded and followed them, have produced a legitimate common ground. I would like today to first delineate for you what I see as a reasonable and effective approach to the regulation of hazardous materials transportation from a state perspective. Secondly, I would like to discuss the important area of state response to emergencies involving hazadous materials. Thirdly, I would like to briefly describe positive attempt that I see being made to address the important issues surrounding hazardous materials transportation. And finally, I would like to comment on the provisions of S. 1108.

From a state perspective, I believe the following points to be a reasonable summary of the issues involved in the regulation of the transportation of hazardous materials.

(1) There appears to be a general awareness of the need for national consistency in the requirements for safety equipment, packaging, placarding and manifests because of the undue burden that could result on interstate transporters from numerous variations in such requirements.

(2) Although regulation of hazardous material transport has been a federal program, the burden of enforcement of federal hazardous material regulations has fallen to the states. Indeed, in my opinion, the states are the most effective and efficient mechanism for such enforcement. However, if states are to do a comprehensive and effective job, federal support for training and education programs is needed.

(3) While bearing the responsibility for enforcement of the federal program, states and local governments should also retain the authority to develop additional specific requirements that they find necessary to properly safeguard the public. State and local governments know best what their capabilities are and where their problem areas are, and what provisions for routing, prenotification and general information will allow them to effectively carry out their responsibilities. Although guidelines in this area may be necessary, local authority to deal with specific safety issues must remain intact.

(4) There is a need to classify materials as to their degree of hazard. "Hazardous Materials" covers such a broad spectrum of materials that substances of low hazard and acutely hazardous substances must meet the same requirements. Although notification of all shipments would indeed be burdensome to shippers, states should be notified of extremely hazardous materials that will be transported through their states so that they can be properly prepared in case of an accident. It is my understanding that this is done on a voluntary basis in some cases; it should be required.

The items I have just listed are all ultimately concerned with preventing accidents. However, states must also address the issue of emergency response when accidents do occur. In Kentucky, the Fire Marshal's Office is charged with the responsibility of enforcing the regulations for the manufacturing, transporting, storage, sale, and use of explosive, combustible and other hazardous materials. Their basic duties are:

(1) Prevention, which is done through the inspection program.

(2) Education and training; conducting training programs for the firefighters, law enforcement officials, or anyone who would have an interest or responsibility in hazardous materials emergencies.

(3) Reponse to a hazardous material emergency when it occurs. The Division of Hazardous Materials in the State Fire Marshal's Office has 15 people in the field and two in the state office. They respond to at least one hazardous materials accident a day. The maximum length of time they would take to get to the most remote area in the state would be 1½ hours. The field and state offices are in radio communication with the state police and can give advice and direction even prior to their arrival on the scene of an accident.

This program has proved to be an exemplary one for the state; not all states are so fortunate. Proper training and education are essential for effective emergency response programs. State programs need additional financial and technical assistance in this area.

Materials recently prepared by the National Conference of State Legislatures [1] define very well the issues at hand for the states regarding enforcement and emergency response. Let me quote them from their document, a copy of which is attached.

"The impact of DOT's decision to turn highway enforcement over to the states will place an increased administrative and financial burden on state and local governments. While virtually every state legislature has adopted at least part of the federal hazardous materials regulations, few states have the financial resources needed to train enforcement personnel and to develop and administer a comprehensive hazardous materials transportation program. Local governments also lack adequate training and resources necessary to develop emergency response programs. yet, only the federal government can ensure uniformity in enforcement training necessary to meet the goal of regulatory consistency established by the HMTA.

"While DOT's Materials Transportation Bureau initiated a small program in 1981 to assist states in developing state enforcement programs, available funds allow participation by only 16 state programs. A similar demonstration program provided funding to five primarily local governments to develop comprehensive emergency response programs. While such federal assistance in most instances is critical to state and local government program efforts, help is also needed to train state and local personnel."

This lack of enforcement resources has resulted in many of the activities industry sees as problems, primarily state and local restrictions, NCSL simmarizes it this way:

"In the absence of both federal enforcement of hazardous materials transportation regulations and comprehensive state enforcement programs, state and local governments are expressing growing concern over the safety of the public in light of the increasing number of hazardous materials shipments. Currently, local governments and a growing number of states are enacting bans, curfews, and routing restrictions on the movement of materials through their jurisdictions. Tunnel and bridge authorities have likewise imposed prohibitions on certain hazardous materials cargoes, especially explosive and some radioactive materials.

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[1] NCSL, Transportation of Hazardous Materials: Issues and Options, June, 1983, Copies available from Donna Wise, NCSL.

"The transportation industry, meanwhile, has voiced concern about the effects of these measures. According to one trucking industry official, his industry has encountered situations where the protections sought and imposed by one community adversely affect the citizens of another. He asserted that outright bans, and restrictions on when and where materials can be transported are examples of regulations that easily can result in a needless concentration of hazardous materials shipments through communities that are unprepared or incapable of responding to an emergency."

From all perspectives, this situation is not good. There are, however, some very positive movements occurring to correct the situation.

(1) The 1982 Surface Transportation Assistance Act provides for the establishment of a grant-in-aid program to assist in motor carrier safety enforcement activities. Secretary Dole in a speech to NCSL in March of this year, stated that she saw no reason why hazardous materials transportation enforcement activities shouldn't be included in that program.

(2) A coalition of approximately 30 state/local/industry organizations has been meeting for more than one and one-half years in an attempt to develop recommendations for a "common ground" manner in which to approach Congressional changes in the Hazardous Materials Transportation Act. Forthcoming recommendations will address enforcement, financing, emergency response, training and uniform regulation.

Finally, I would like to commend Senator Danforth for his initiative in introducing S. 1108 as it pertains to the transportation of hazardous materials. From a state perspective, S. 1108 recognizes two very important needs: one being the need for financial assistance to states for enforcement purposes; the other being the need for assistance to state and local governments for emergency response planning and preparedness. However, NCSL believes that S. 1108 should go farther toward addressing and clarifying the respective roles of federal, state and local government. Specifically, NCSL recommends that S. 1108 be amended to incorporate the following concepts:

The role of U.S. DOT should be more clearly defined. Specifically, U.S. DOT should be mandated to promulgate technical standards and criteria for the manufacture of hazardous materials containers, hazardous materials classification and definition, description, packaging, marking, labeling, documentation, and placarding of equipment for transportation. These requirements should be nationally uniform, and U.S. DOT should be directed to assume full enforcement responsibility.

U.S. DOT should be directed to promulgate performance standards for hazardous materials shipments in commerce. This provision recognizes that unique local circumstances may justify the promulgation of certain state and local regulations. Such regulations should be allowed to stand if they meet the preformance standards and do not impose an undue burden on commerce.

States are the proper level of government to assure the comprehensive enforcement of hazardous materials transportation regulations for shipments in commerce. However, if the federal government shifts this responsibility to the states, there must be an assurance of adequate and predictable financial assistance to support training of enforcement personnel and development of adequate state data systems. We believe that the Committee should reaffirm Congressional intent that such funds are made available under Sec. 402 of the Surface Transportation Assistance Act of 1982.

The federal government should assure that adequate and predictable funding is available for the development of state and local emergency response programs and for the training of emergency response personnel. Such a funding source would alleviate the necessity of imposing individual state and local fees.

In my opinion, a lot of ground has been covered in attempting to define the legitimate roles of the federal, state, and local governments in regulation of hazardous materials transportation. But defining the roles is only the beginning. How we fund and implement these roles will eventually determine how successful we will be in properly handling in the safest possible manner the hazardous materials our society has come to depend upon.

We have a lot of work yet ahead of us.

Again thank you for the opportunity to present our views to the Committee. I would be happy to answer any questions.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. You emphasize in your testimony the need for adequate funding for State enforcement of hazardous materials transportation regulations. Do you believe that the funds authorized last year under Section 402 of the Surface Transportation Assistance Act for State enforcement of federal highway safety regulations are sufficient for this purpose or should Congress authorize additional funds to deal solely with hazardous materials safety, as done in S. 1108?

Answer. I believe that last year's Congressional enactment of the Surface Transportation Assistance Act, which established a Motor Carrier Safety program to provide financial assistance to the states, will go a long way toward aiding states in the development and implementation of hazardous materials transportation enforcement programs. I understand that $8 million will be available in fiscal year 1984 and in subsequent years this amount will increase to $50 million. While at first glance an additional federal grant program for state enforcement efforts might appear attractive, I believe that the more prudent course of action would be to closely monitor the progress and needs of the states under the Motor Carrier Safety Program in order to determine the adequacy of the funding levels. If it appears that available funding is not sufficient for the development and implementation of state enforcement programs, I would encourage Congress to explore supplementary funding.

Question 2. In your testimony you state that the role of the Department of Transportation should be clearly defined in S. 1108. Do you believe that the Federal Emergency Management Agency should play any role with regard to the transportation of hazardous materials?

Answer. I do believe that the U.S. Department of Transportation should retain the lead role in the federal hazardous materials transportation program. While I recognize that other federal agencies such as the Nuclear Regulatory Commission, the U.S. Environmental Agency and the Federal Emergency Management Agency also have responsibilities for various activities relating to hazardous materials transportation, I firmly believe that this division of responsibility underscores the need for a lead federal agency. Therefore, specifically with regard to FEMA, I believe that it should continue emergency response planning efforts, but that U.S. DOT should retain primary responsibility for assuring that FEMA efforts are reaching those state and local officials who deal specifically with hazardous materials transportation incident response.

Question 3. The Hazardous Materials Coalition testified to agreement on an overall regulatory scheme which would call for Federal performance standards with respect to operational regulations, allowing for state and local input in response to unique local concerns. As part of this proposal, industry has indicated the need for a forum for resolving differences with respect to these regulations. How would you envision the state and local participation with respect to such regulation?

Answer. I believe that such a forum is best conducted at the state level. I agree with the coalition's proposal that as a condition of receiving U.S. DOT assistance for hazardous materials transportation programs, states should establish some mechanism that assures an ongoing dialogue between state, industry, and local representatives. It is anticipated that through the use of such a forum, issues could be addressed and potentially resolved prior to the adoption of laws and ordinances. An additional benefit to the establishment of forums at the state level, is the potential for a more coordinated use of state, local and industry resources to address either enforcement or emergency response needs.

Question 4. Problems which have arisen with respect to hazardous materials regulations have resulted not only from conflicts between the Federal and state governments but also among the various localities. In this regard, the formal establishment of task forces with respect to regulation and information dissemination has been proposed by members of the Hazardous Materials Coalition. How have such local conflicts been resolved in the past, and how would you envision ensuring more coordination in the future?

Answer. Certainly Kentucky like other states has grappled with conflicts in regulating the transportation of hazardous materials. In the past, communications between affected parties have generally occurred as a result of the adoption of ordinances or regulations. I would hope that in the future the establishment of state/local/industry forums would promote dialogue about and resolutions of potential conflicts. Such a forum might result in informal agreements between affected parties, thereby eliminating the need for formal legislative action; or, if legislative action is warranted, at least insure that such action reflects an understanding between interested parties.

Senator GORTON. I thank you very much, Senator Ford, and extend my thanks to all the members of this panel, in the absence of the chairman of the Transportation Subcommittee. What I should like to do is to notify each of you that we will submit questions to you in writing based upon your testimony. We would appreciate your responding to those questions, and they will be included in the record.

That does not, of course, include Senator Exon, and I will turn it over to him for any questions he may wish to ask.

Senator EXON. Mr. Chairman, thank you very much. And let me add my thanks to the excellent testimony from the panel today, and I just have one comment.

I am sorry also that my good friend Wendell Ford was not here to introduce you, Senator Ford. I was looking forward to that.

Just one question that I would like to ask, if it is appropriate, and if you care to answer. I have known many Fords very well and have been very favorably impressed with them. I knew a Gerry Ford very well, I know Wendell Ford very well, and I am impressed with Senator Ed Ford and his testimony here this morning.

So, since we have made such a big thing out of the Ford name, I would like to ask you to reply to a negative response that I got from Gerry Ford and Wendell Ford when I asked this question. Once upon a time in the State of Missouri not too long ago, there was a man by the name of Ford. His name was Bob Ford. You remember well the lines to that famous song about, "Bob Ford, he was a dirty little coward, that shot Mr. Howard and laid poor Jesse in his grave."

The other two Fords said they were not a member of that Ford family. Senator Ford, was Bob Ford a member of your family?

Mr. FORD. To be consistent with the other Fords, no, sir, he was not.

Senator EXON. No further questions, Mr. Chairman.

Senator GORTON. Thank you for that lesson in history, Senator Exon.

We do appreciate greatly the contributions each of you has made, and we will ask you for a greater contribution in writing in the immediate future. Thank you very much.

Our final panel consists of Mr. McGough and Mr. Millar, and if they will step forward we will hear from them.

Senator EXON. Mr. Chairman, could I make just a comment while this panel is being seated? I am sorry that Senator Danforth is not here, because I did want to ask him a question for clarification. I would just like to have some clarification as a part of the record now—and I assume that you, presently presiding, cannot answer my question.

During the time before you came I began to ask a previous panel some questions with regard to the railroad implications of this act. Senator Danforth interrupted me and said on the record that S. 1108, of which he is the introducer, has nothing whatsoever to do with railroads. I suspect that that is not the case, since in reviewing the bill introduced by Senator Danforth I interpret title IV of that act, as written, which is entitled "Hazardous Materials Transportation Act Amendments of 1983," to include railroads.

Now, it might be that the introducer of the bill intends to put some exemptions in this act as far as railroads are concerned. If that is true, I think we should have an understanding now.

Could either the present chairman of the committee or any of the staff on either side kindly clarify for me now whether or not railroads are included, and if not, would they be good enough to write a joint letter to Senator Danforth and myself, which I would ask to be included in the record, so that we would basically know what we are talking about when we are holding hearings on an important piece of legislation like this?

Senator GORTON. The acting chairman cannot answer your question, Senator Exon. I think it a perfectly appropriate question and I suggest that the response of Senator Danforth, after staff has acquainted him with the question, be included in the record at this point.

Senator EXON. Thank you.

[The following information was subsequently received for the record:]

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C., November 7, 1983.

Hon. J. JAMES EXON,
U.S. Senate,
Washington, D.C.

DEAR JIM: In response to your request at the Commerce Committee's July 13 hearing on hazardous materials transportation, this letter is a clarification of the applicability of the provisions of Title IV of S. 1108 to railroads.

S. 1108, the "Highway Safety Act of 1983", is aimed at enhancing various aspects of highway safety. Title IV, dealing with the transportation of hazardous materials, amends the Hazardous Materials Transportation Act of 1974, which covers all transportation modes. As drafted, Title IV of S. 1108 inadvertently encompassed railroads. My intent, however, was always to limit the provisions of this legislation to the transportation of hazardous materials on the highways. Specifically, this title seeks to address concerns related to the routing of and notification regarding hazardous materials shipments and the strengthening of enforcement of hazardous materials transportation regulations, as well as the need to improve federal/state/local coordination in the regulatory process and to enhance training programs for emergency response and enforcement.

As you are aware, Title IV was removed from S. 1108 prior to the Committee's consideration of the bill on September 20 and the reported version of S. 1108 contains no provisions related to hazardous materials transportation. It is my intent to address this issue in separate legislation.

I am hopeful that this explanation clarifies my position concerning the degree to which railroad transportation of hazardous materials was addressed in Title IV of S. 1108. I look forward to working with you on the issue of hazardous materials transportation in the future.

Sincerely,

JOHN C. DANFORTH, *Chairman,*
Surface Transportation Subcommittee.

Senator GORTON. Mr. McGough, we will proceed to you.

STATEMENT OF JOSEPH T. McGOUGH, JR., COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL PROTECTION, CITY OF NEW YORK, ACCOMPANIED BY BILL VANDENBROEK, CITY OF NEW YORK, WASHINGTON OFFICE

Mr. McGOUGH. Thank you. My name is Joseph McGough. I am the commissioner of the New York City Department of Environmental Protection and the chairman of its hazardous materials task force. I am testifying today on behalf of the city of New York, and I must say that I am pleased to be here today. It is not often that the city of New York gets to sit on a panel with the environmental groups, and I am thrilled to be here on that panel today.

The transportation of hazardous materials is a serious nationwide public safety issue. The city of New York has dealt with this issue on both the operational level and on the legal level.

Operationally, in 1980, a tank truck carrying liquefied propane gas, in violation of New York City routing regulations, sprung a leak on the George Washington Bridge. I am sure you recall the incident. It resulted in a massive tieup, immobilizing traffic in Manhattan for over 7 hours, and causing the evacuation of thousands of residents as a precautionary measure.

On the legal side, we have also brought suit against the Department of Transportation when, a few years ago, it passed a rule which purported to supercede all State and local restrictions on the highway transportation of radioactive materials. The rule was aimed at a provision of the New York City health code which prohibited the transportation on the highway of spent nuclear fuel and other large quantities of radioactive materials through the city of New York.

Spent nuclear fuel is highly toxic. It has been estimated that a worst case release of such fuel in the environs of the city of New York would result in damage in the billions and health consequences up to as many as 1,300,000 latent cancer fatalities if the figures are adjusted for population density.

Since all highway routes leading from Long Island pass through the city, the immediate effect of the local rule was to require radioactive wastes generated by Brookhaven, National Laboratories on Long Island either to be stored at Brookhaven or to be barged or ferried around the city. The city's rule would also have required the Long Island Lighting Co. to use a similar means to ship spent nuclear fuel and related radioactive wastes from its nuclear-fired generating station on Long Island.

Although the city of New York had suggested barging as a viable alternative to highway transport of such fuel and other large quantities of radioactive materials around its densely populated urban areas, and despite the fact that Brookhaven in fact had ferried its wastes across Long Island Sound to New Haven, Conn., in 1976, the Department of Transportation steadfastly refused to consider that option.

Ultimately, a Federal court held that the Hazardous Materials Transportation Act and the National Environmental Policy Act required DOT to consider the feasibility of nonhighway modes of transport as a factor in reducing the risk of catastrophic accidents in densely populated urban areas. That suit is now being appealed in the second circuit and I am sure it may go all the way to the Supreme Court of the United States.

The Federal Government should not require the transportation of hazardous materials through the most densely populated regions of this country unless it demonstrates that such transportation is the safest possible alternative. Until the Federal Government can fulfill its burden of proof, local governments should not be asked to bear those risks and should vigorously resist attempts to dilute or eliminate local police concerns.

The bill before the committee, S. 1108, deals with important and controversial parts of the Hazardous Materials Transportation Act, namely the relationship between Federal, State, and local governments, the funding and training of emergency response teams, and Federal authority to establish routing of hazardous materials in interstate commerce.

The purposes enumerated in the bill are also admirable. Promoting public safety is surely a goal that can receive no negative comment. Increased training of personnel who will deal with emergency responses to hazardous materials incidents is likewise laudable. And the concept of more uniformity of regulation is a valid one.

It must be kept in mind, however, that uniformity of regulation is not an end in itself which is independent or should be independent of safety concerns. Too many valid and necessary State and local regulations, especially those dealing with routing, curfews, and prenotification, can be overridden by the Secretary's rulemaking authority proposed by this bill.

New York City—and I am sure I am speaking for other densely populated urban areas of the Nation, as well as other local governments that have spoken before this committee today—is not satisfied that the Secretary's regulations will achieve an acceptable level of safety. The Secretary's consideration as proposed in the amendment of "whether any mode represents an unacceptable level of risk to safety" in determining routes should be strengthened to require that the Secretary choose the safest available mode, not just limited to the highway mode, but also considering other modes of transportation as well.

In light of HMTA's goal to minimize all credible risks, safety concerns should be the Secretary's paramount interest.

It is heartening to see that the participation of State, local, and regional governments is provided for in the Secretary's promulgation of regulations, and we hope that the input of localities with respect to this compelling safety question will be a major factor in the decision reached by the Secretary. It would be unfortunate, indeed, if in the name of uniformity commercial interests were to override legitimate public safety concerns.

Overall, your amendments address legitimate questions, but should be more sensitive to local problems, unique problems created by the transportation of hazardous materials.

I might say that in the brief submitted in the lawsuit that we brought concerning the transportation of nuclear spent fuels, the statements by DOT viewed their role as balancing commercial interests against safety interests. That is not the way that the city of New York certainly, or the district court, read this very important law. But that attitude on the part of that Department is very, very disturbing when we have given that Department such broad rulemaking powers in the routing area.

I would like to take a few minutes to address the proposal of the Hazardous Materials Transportation Coalition. A more serious set of questions is raised by this group. The coalition first proposes that national uniformity in the regulation of technical aspects of hazardous materials transportation is necessary and that unless a uniquely local situation is presented, such as routing and curfews, the Federal Government should be in control. This is substantially the scheme that exists now. The coalition suggests that if a local concern exists, the local regulation should be subject to uniform federally promulgated performance standards. This scheme could lead to even greater preemption of local safety regulations and possibly dangerous situations depending, of course, on what the uniform standards contained. This is an issue of great concern to New York City.

The second major concern of the coalition is that of enforcement. Under their proposed regulatory scheme the Federal Government would promulgate all regulations except those that are of uniquely local concern. Enforcement, however, would be shared by all levels of government except in the area of tank and container construction. Localities would be better able to enforce regulations in which they have had a say in promulgating and more latitude should be provided for exceptions.

The proposal is problematic, as well, in that it addresses surface transportation only. Alternative modes of transportation are critical to the provision of the safest possible handling of hazardous materials.

A final problem which we see in the coalition's proposed amendments is the Federal fee collection from the industry in lieu of all State and local hazardous materials fees. It is unclear that the potentially increased Federal funding to localities as a result of this scheme would be an appropriate or sufficient substitute for local fees.

In conclusion, I would like to reiterate the city of New York's concern that any amendments to the Hazardous Materials Transportation Act take into account the unique safety problems of localities across the country which should not be overlooked in the name of a uniform Federal regulatory scheme.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question. To what extent do you believe there realistically can be uniformity in regulations governing hazardous materials transportation?

Answer. A uniform framework for regulation governing hazardous material transportation is a legitimate policy goal. In the absence of a framework for uniform regulation, each jurisdiction could promulgate regulations to maximize the protection of its citizens with less regard given to the effects on commerce and on the safety of its neighbors. Thus a uniform regulatory scheme governing hazardous materials transportation is desirable in order to avoid the possible transfer of risks by one locality to its neighbors.

However, the extent to which the specific regulations themselves are uniform depends upon their subject matter. Those aspects of hazardous material transportation such as classification, definition, description, packaging, marking, labeling, placarding and documentation would benefit from specific uniform regulation. On the other hand, the same degree of uniformity would not be appropriate where unique local circumstances have a direct bearing on the degree of safety that can be achieved. Accordingly, in those areas such as routing, curfews, and prenotification which are intimately affected by local conditions and requirements, uniformity should extend only to the general framework of the regulations and the specific contents of the regulations should be site specific with state and local governments having direct input into their formulation.

Question. What do you see as the appropriate federal role, as opposed to those of other levels of government, in the regulation of hazardous materials shipments?

Answer. The Hazardous Materials Transportation Act ("HMTA") attempts to accommodate the conflicting policy considerations discussed above by granting the Department of Transportation authority to make national rules for the safe transportation in commerce of hazardous materials while allowing localities to make exceptions to these rules where greater safety results and the burden on interstate commerce is not "unreasonable." Although there will always be conflicting interpretations of what is reasonable, this scheme should be preseved. As stated in New York City's testimony, our view is that the HMTA is properly a safety statute and the Department of Transportation should regard the promotion of safety as its first priority.

We agree that uniform federal regulation is appropriate for such matters as hazardous materials classification, definition, description, packaging, marking, labeling, documentation, placarding, or equipment for transportation. However, exclusive uniform regulation cannot effectively consider the many local hazards, concerns, and conditions which require particular routing, curfew and prenotification requirements.

An adequate case for individual consideration by DOT of each transportation mode has not been made. There has been no showing that employment of one mode of transportation to the exclusion of all others will produce the optimum balance between the demands of local protection and national economy. There may be instances where a local ban on transportation by one mode is justified in the interest of safety where other modes of transportation are reasonably available. A non-preemption proceeding, such as the one currently included in HMTA, is an appropriate forum for such a determination, since reasonableness is properly determined on a case-to-case basis and is subject to traditional judicial review. Accordingly, we strongly oppose any provision of law which would allow the Secretary of Transportation to specify which mode or modes of transportation must be used nationwide, and we support the continued existence of the non-preemption determination proceeding with the inclusion of criteria flexible enough to accommodate reasonable local concerns.

Considerable interest has been demonstrated in defining the allowable scope of local safety regulation by requiring that local standards be in conformance with national "performance standards." It is reasonable to ask that local regulations stand up to scrutiny on the grounds of safety, effects on commerce, and burden on neighboring localities. Beyond that, the concept is vague, and we are concerned that it may simply be preemption by another name. As discussed above, reasonableness must be determined on a case by case basis, and should not be assigned a univeral definition by the Congress.

Finally, we agree that regional consultation and participation in rulemaking or development of local regulations will help foster uniformity and we endorse mandatory regional consultation as a precondition to any new funding for enforcement or emergency response.

Senator Danforth [presiding]. Thank you very much.
Mr. Millar.

STATEMENT OF DR. FRED MILLAR, WASHINGTON REPRESENTATIVE, ENVIRONMENTAL POLICY CENTER

Mr. Millar. Mr. Chairman and Senator Exon, I am Dr. Fred Millar, director of the nuclear and hazardous materials transportation project of the Environmental Policy Institute, of which the Environmental Policy Center is our lobbying arm. We have worked on hazardous materials transportation issues for 4 years and have testified on numerous occasions on State and local legislation, and we are a consultant to the city of London, England, on the transportation of spent nuclear fuel.

We appreciate the opportunity to testify on title IV of S. 1108, the Highway Safety Act of 1983. And we do, by the way, understand that this legislation covers railroad issues as well as those of other modes. In fact, explicitly the legislation says that DOT will have some role in the choice of mode of shipments.

So in our testimony, in fact, we have at some length elaborated on the question about the Federal Railroad Administration's research program on the possible value of rerouting hazardous materials shipments around highly populated areas, and that research program has been unfortunately cut off prematurely and we would like to see it continued. But certainly, it is our understanding that title IV does include various modes within its scope.

We appreciate the attention of title IV to the severe hazards to the public safety of hazardous materials transportation. We note that there have been several explosions and large-scale evacuations recently that have focused people's minds on these questions.

We are not only concerned as environmentalists with the short-term acute hazards to people of explosions and so forth, but we are also concerned with the long-term hazard to people in communities from accidents that release toxics to their land, ground water, and municipal water systems. Such long-term hazards we feel are not fully taken into account by, for example, the recent DOT rulemaking proposals concerning rail tankcar retrofits, insofar as these DOT proposals focus on preventing the acute or short-range hazards, to the neglect of long-term hazards from toxics.

We understand that title IV of the bill before us today is offered as a vehicle for discussion of some of the serious issues surrounding hazardous materials transportation, so our comments on this title will be accordingly brief, and in our longer testimony we raise some more general issues that new or amended legislation may seek to address and we suggest some positive directions to work in improving safety.

We support the sections of title IV that seek to evaluate and upgrade training programs and planning for State and local emergency response, and that appear to concede that only local and State officials can provide any realistic level of enforcement of Federal hazardous materials transportation laws.

We are concerned, however, that the two new programs of Federal grants to the States for enforcement and emergency response planning are not capable of achieving realistic funding levels under the current fiscal climate. We are also concerned that various sections of title IV could encourage a premature expansion of Federal preemptive authority over State and local regulators without any demonstrated or anticipated safety benefit.

Our analysis of what is at stake in the proposed legislation is perhaps best illustrated with a quote from Justice Brandeis:

> To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country.

As environmentalists, we have witnessed a recent burgeoning of responsible efforts on the State and local levels to grapple with the serious problems in hazardous materials transportation, and we have outlined many of these in our testimony. That is what is known by some people as a proliferation or a patchwork of State and local ordinances.

We think that State and local officials have acted basically responsibly, and we think that these kinds of experiments are necessary in the search for viable solutions to problems and possibly solutions that could be eventually workable at the national level. Whoever would choke off such State and local initiatives, we assert, bears a heavy burden of demonstrating both the authority and clear safety benefits of doing so.

In our testimony, for example, we cite various court decisions that have approved of local safety regulations and found them entirely consistent with the existing Hazardous Materials Transportation Act, and our basic position is that the existing law is adequate in this area. It is somewhat vague, as any law that attempts to deal with complex Federal, State, and local relationships, I think, has to be. We wish it to remain vague until there are more clear ideas about who can do a good job in regulating in these various areas.

We do suggest in our testimony two new areas where DOT research might be very helpful. One is in regard to the crashworthiness of vehicles, like the MC-306 tanktruck and the railroad tankcars; and second, again, in exploring the potential of rerouting the most dangerous shipments away from highly populated areas. The research shows that that has a potential value of reducing the exposure to hazardous materials by 50 percent, and we certainly think that something like that ought to be pursued at more length.

[The statement follows:]

STATEMENT OF DR. FRED MILLAR, WASHINGTON REPRESENTATIVE, ENVIRONMENTAL POLICY CENTER

Mr. Chairman, members of the committee, I am Dr. Fred Millar, Director of the Nuclear and Hazardous Materials Transportation Project of the Environmental Policy Institute, of which the Environmental Policy Center is our lobbying arm. The Environmental Policy Institute is a research and educational public foundation operating under Section 501(c)(3) of the Internal Revenue Code. Founded in 1974, the Institute concentrates on energy conservation, water resources, coal, oil and gas, nuclear, synthetic fuels, and agricultural resource issues.

EPI has become a national information center for government agencies, industry, the media, and hundreds of local citizens organizations throughout the country on energy and environmental issues. In addition to conducting research and monitoring the implementation of a number of key energy and environmental laws in the executive branch, EPI is committed to helping citizens understand the activities of federal agencies so that they are better able to influence the policies of the federal government.

EPI has been working on hazardous materials transportation issues for four years, and has testified in numerous state and local legislative bodies and in the House of Representatives. EPI is a consultant to the City of London, England on nuclear spent fuel transport and was a member of the national Task Force on Nuclear Transport issues convened by the President's State Planning Council on Radioactive Waste Management. Much of our current work involves state and local regulation of the transportation of hazardous wastes and other hazardous materials.

The Institute appreciates the opportunity to testify on Title IV of S. 1108, the "Highway Safety Act of 1983." Title IV's acknowledgement of and attention to the "severe hazards to the public safety" of hazardous materials transportation is wholeheartedly welcomed by those citizens, state and local officials and environmentalists who have recently been impelled to look more seriously at those hazards and to accept the responsibility of dealing with them.

Explosions and large-scale evacuations are, obviously, powerful incentives to focus the mind. Such serious incidents in recent years as those in Somerville, MA.; Missassaugua, Ontario; the Caldecott Tunnel fire near Oakland, CA; and the Denver, CO. nitric acid incident are sobering reminders of the need for serious changes in the transportation of hazardous materials.

Environmentalists are concerned not only with the obvious short-term hazards to people in such accidents as BLEVE's and chlorine releases, however, but also with the long-term hazards to people in communities from transport accidents that release toxics to their land, groundwater, and municipal water systems. Such long-term hazards, we fear, are not fully taken into account, for example, by recent DOT rule-making proposals concerning rail tank car retrofits, insofar as these proposals focus on preventing the "acute" or short-term hazards such as explosive and flammable commodities to the neglect of long-term hazards from toxics. Thousands of Americans have in recent years been forced to take a crash course in the hazards of toxic materials and have prompted or supported vigorous local, state and federal action to deal with these hazards. The environmental community can perhaps be of considerable help to shippers, carriers, transport workers, emergency responders and public officials concerned to improve the safety with hazardous materials transportation.

It seems clear that we all have to play catch-up in dealing with the implication of the transportation as well as the storage and recycling or disposal of toxic materials. A case in point: the 43-car Livingston, LA derailment on September 28, 1982 caused not only blast and fireball damage, but also the release of huge amounts of toxic material: "The principal long-term problem to the community and the railroad has been the large-scale absorption by soil in the detailment area of perchloroethylene, a toxic chemical that may be carried in tank cars without head-end or bottom-outlet protection. The National Transporation Safety Board (NTSB) said that the absence of tank car protection contributed to the contamination of the environment." (NTSB, "Safety Information", June 16, 1983)

NTSB officials have said that four or five days passed before there was even any recognition by emergency responders that the released material could be extremely toxic and that containment and mitigation measures should be implemented to prevent long-term hazards to the community.

We understand that Title IV of the bill before us today is offered as a vehicle for discussion of some of the serious issues surrounding hazardous materials transporation. Our comments on Title IV will, accordingly, be relatively brief and we will raise at more length some more general issues that new or amended legislation may seek to address and suggest some positive directions to work in improving safety.

We support the sections of Title IV that seek to evaluate and upgrade training programs and planning for state and local emergency response, and that appear to concede that only local and state officials can provide any realistic level of enforcement of federal hazardous materials transportation laws.

We are concerned, however, that the two new programs of federal grants to the states for enforcement and for emergency response planning are not capable of achieving realistic funding levels in the current fiscal climate. We are also concerned that various sections of Title IV could encourage a premature expansion of federal preemptive authority over state and local regulators without any demonstrated or anticipated safety benefit.

Our analysis of what is at stake in the proposed legislation is perhaps best illustrated with a quite from Justice Brandeis: "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be frautht with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."—Brandeis, Louis D., in *New York State Ice Co.* v. *Liebmann,* 285 U.S. 262, 311 (1931).

As environmentalists we have witnessed a recent burgeoning of responsible efforts on the state and local levels to grapple with the serious problems in hazardous materials transportation safety. In the spirit of the quote from Justice Brandeis, we see these positive state and local safety efforts as necessary "experiments", if you will, in the search for viable solutions to these problems, perhaps eventually leading to programs that promise to be workable at the national level. Whoever would choke off such state and local initiatives, we assert, bears a heavy burden of demonstrating both the authority and the clear safety benefits of doing so.

SAFETY INITIATIVES ON THE STATE AND LOCAL LEVEL

The transportation of hazardous materials, like some other issues involving hazardous wastes, has become a "backyard" issue. Industry newsletters cite with alarm the spread of workplace "right-to-know" laws, which gave workers information on chemical hazards in the workplace and which are now being expanded to state and local "community right-to-know" laws about hazardous materials and wastes being transported and stored in the given community.

The International Association of Firefighters in August 1982 called on state and city governments to enact right-to-know laws that could protect firefighters from injuries incurred in fighting chemical fires. On the state and local levels, citizens and their elected officials have seen the gaps in federal regulation and are beginning to assume the responsibility themselves of protecting their communities from undue hazards.

No one would argue that in the long run safety in hazardous materials transportation would be served by all 30,000 U.S. jurisdictions having their own differing regulations. The real question is, in the short run are various states and localities beginning to do a reasonably serious and effective job of protecting their citizens? Everyone seems to agree that the incentives for safety regulation are strongest on the state and local levels, where public officials must attempt both to provide first response to often bewilderingly complex emergencies and to contain or clean up spills and releases of toxic materials to the environment.

The most promising dynamic seems to involve encouraging local and state initiatives for protective regulations that can provide the building blocks for whatever additional regional or national regulation may be desirable. The goal would be to seek, therefore, only the "appropriate level of uniformity" at the federal level.

What is "appropriate" is, of course, at issue all over the U.S. Even industry experts, however, are clear about the basic dynamic underlying recent local regulation: "The proliferation of hazardous materials transportation regulations is symptomatic of a problem," says a veteran industry observer. They reflect the fact that "local governments are not confident they have the means to deal with either enforcement of federal regulations or hazardous materials emergencies," says Stanley Hoffman, chief transportation counsel for Union Carbide Corp. In fact, he adds, "many of them do not have the capability yet." (Hazardous Materials Transportation, August 1982)

Some evidence of the vitality and diversity of local or state initiatives may be seen in the following:

Jurisdictions as different as Boston, New York, Dallas, Philadelphia, and Covington, KY have enacted comprehensive routing regulations of various sorts (sometimes including permit fees) which cover a wide range of hazardous materials cargoes. In other cities such as Los Angeles, Lexington, KY, and Gainesville, FL, local officials are seriously considering such ordinances. No one seems to have a comprehensive list of jurisdictions that are involved in what is a decentralized movement of local initiatives.

In Canada, the city of Edmonton already has routing regulations, and the cities of Toronto, Regina and Winnipeg are considering them. After the Missassaugua (suburb of Toronto) rail accident that forced a week-long evacuation of a quarter-million people, authorities have mandated a reduction in speed for hazardous materials trains and a gateway inspection system to detect hot-boxes before trains enter the metropolitan area. The Canadian Transport Commission and University of Toronto are currently engaged in a joint study on the feasibility of rerouting hazardous materials rail lines around the city and of preventing residential buildup near the relocated lines.

State and local fee systems on hazardous shippers are increasingly popular:

The EPA has just released figures from its recently concluded survey of state hazardous wastes programs, and one trend stands out: Increasingly, states are taxing waste transporters as well as generators and disposal facilities to fund their programs. At last count, 14 out of 20 states that assess fees now tax the waste haulers. Fees are assessed on a per-vehicle basis, or per-company basis, or on quantity of waste transported. And, more states are considering similar fees as a means to fund their programs.

A per-vehicle charge, according to the EPA study, is the most common basis for taxing transporters, regardless of what portion of the truck's annual load is hazardous waste. Here are examples of how fees can be assessed: In Ohio, the state charges a base fee per company plus $3 per power unit (as opposed to trailer units); Missouri charges $5 to $20 per vehicle, based on whatever portion of the annual load is hazardous waste (e.g., two vehicles that carry hazardous wastes 50 percent of the time equal one vehicle in total); California charges a base fee of $50 plus $15 per vehicle if the company's gross revenues exceed $35,000; New Jersey charges a flat fee of $50 per vehicle.

". . . Other jurisdictions with transporter fees include: Arkansas, Indiana, Kansas, Massachusetts, Michigan, New Hampshire, Pureto Rico, Rhode Island, Tennessee, and Wisconsin." (Hazardous Materials Transportation, October 1982, p.7)

DOT officials cannot even keep up with the rapid expansion of state enforcement activity; after a meeting in Phoenix, DOT's Alan Roberts noted that: "* * * all the DOT personnel present were rather impressed with the vigor that these people showed in pursuing their duties, as assigned by their state agencies, relative to compliance with the Hazardous Materials transportation regulations. We found that there was over 40 personnel assigned in the state of Texas alone, which I never knew, and I think some of you are aware of the continuing and elevated interest in California and Illinois, Louisiana, Pennsylvania, and more and more I think we're going to see this kind of activity." (Transcript, DOT Public Hearing on Hazardous Materials, September 15, 1982, St. Louis, MO, p. 425)

DOT officials have cited the "very rapid increasing interest on the part of state and local officials" in at least twenty states in the serious generic "leaking" problems recently uncovered with the design of the MC-305 and MC-306, the main gasoline tankers on U.S. highways. (DOT experimental studies of overturn of these tankers—with no collisions involved—resulted in 451 leaks from 61 cargo tankers, an average of 2.47 leaks per compartment of the MC-306 and 2.26 for the MC-305. Each leak sprayed about 2 gallons of gasoline, a spray pattern providing "all sorts of ignition possibilites." DOT officials note that the offending breather vents and high-capacity vents "do not comply with the (DOT) performance requirements", i.e. the vents do not contain the cargo. DOT's summary of the problem is in the Federal Register, vol. 47, no. 124, June 28, 1982, p. 27876.)

DOT's response to state and local interest in the serious tank truck problem, however, can be perhaps characterized as containment, not only of gasoline, but also of state or local regulation. In the St. Louis meeting, DOT's Ken Pierson had agreed to discuss a strategy DOT had for improving flammable product movement in tank trailers.

Pierson's comments began: "Because of the interest of a great number of state and local authorities in this issue, it seemed to us that we ought to have gotten together and developed a kind of an overall strategy on what it was we were going to do to keep the whole thing in perspective, recognizing that any precipitive action by the Federal Government, or state, or local governments, simply wouldn't remedy the problem, and probably create worse problems." (p. 418)

And later: "We do not want to be alarmists. We believe that we have documented a problem. We believe that it's real. You may critique pieces of it, but, in its totality, I think it's very well documented. That belief, I think is shared by state and local jurisdictions. We would like to work the problem with leadership at the federal level, and, if you will, *hold state and local actions in abeyance* while we collectively work our way through the problem." (p. 423) (italic supplied)

Despite DOT's preemptive thrusts in many areas, some parts of DOT's regulations are encouraging of local or regional efforts in the regulation of hazardous materials transportation. The radioactive routing rule, HM-164, for example, explicitly leaves room for regional route designation for radioactive truck shipments (It is unclear how the courts will eventually interpret an individual city or county's allowable role). We are told by officials in the Materials Transportation Bureau, moreover, that DOT is just beginning to get preliminary results of six regional studies on hazardous materials transportation problems, in New Orleans, Memphis, Massachusetts, Indianapolis, San Francisco, and Niagara County, N.Y. These studies build on an earlier prototype DOT study coordinated by the Puget Sound Council of Governments. A seventh study, called "the routing study", is being done in the Portland, Oregon area, headed up by the Office of Emergency Management there.

The aim of all these studies, we are told, is for DOT to evaluate ways of assisting local, state and regional governments to assess (1) the hazardous materials transportation situations in their area, (2) the resources available to deal with hazardous materials safety problems and (3) the processes of intergovernmental coordination necessary to increase hazardous materials transportation safety. DOT will evaluate the studies and provide feedback in the form of overviews or handbooks for whichever local governments may wish to take advantage of the insight and experience gained in the studies.

Given the incomplete nature of this DOT research, it certainly seems premature to be granting DOT further preemptive authority in the areas of routing, prenotification, choice of mode, and (the catch-all category) "additional protective measures" (Section 122 of S. 1108's proposed amendments to HMTA). Surely citizens groups and interested jurisdictions will want to consider the evidence from these studies and DOT's summary and evaluation of them, while reserving their own right to construct regulatory and coordination systems that may or may not be in accord with DOT's conclusions and advice.

FEDERAL PREEMPTION: DOES IT PROMOTE SAFETY

Many jurisdictions considering legislation on hazardous materials transportation, especially in the routing area (which DOT broadly defines as including bans, choice of routes, time of day restrictions, and permit fee systems), are understandably unsure of the scope of their authority. Several have been monitoring the outcome of recent federal court cases in which state or local regulation have been challenged as inconsistent with federal law or in which states and localities have sued DOT for what they see as an illegal and counter-productive attempt at preemption of state/local regulation.

Even DOT's position on what kind of local or state regulation on routing of hazardous materials transportation could be accepted by DOT as "not inconsistent" with the HMTA is clearly evolving as DOT exercises its fledgling "Inconsistency Ruling" administrative process. The clearest example is in the case of Boston's hazardous materials transportation regulations, in which DOT initially ruled them inconsistent and a year later reversed itself, declaring it could not decide whether they were or not. (Federal Register, April 29, 1982)

The recent federal court decisions have with one exception been *favorable* toward the enactment of responsible local regulation of hazardous materials routing (broadly conceived):

New York City's ban on tank truck shipments of LNG, LPG, chlorine and vinyl chloride in the city was upheld, along with routing and curfew regulations on such shipments through the city from Long Island, in the U.S. Court of Appeals for the 2nd Circuit.

On August 7, 1980, a tank truck owned by Ritter Transportation Co., Inc. began leaking liquefied petroleum gas (LPG) from a relief valve as it crossed George Washington Bridge, en route from New Jersey to Connecticut. A huge, eight-hour traffic jam resulted. The truck was illegally carrying the LPG without a permit and New York City (NYC) sued Ritter. Ritter and the National Tank Truck Carriers (NTTC) sued NYC in district court, claiming preemption of the city ordinance and undue burden on commerce.

District Court Judge Griesa ruled in favor of NYC on almost all counts in the two cases (15 F. Supp. 663 (S.D.N.Y. 1981) and judgment entered October 13, 1981). The second case was appealed. (*National Tank Truck Carriers, Inc, and Ritter Transportation, Inc.* v. *City of New York and NYC Fire Department*).

The appeals decision, on May 3, 1982, was cited as "critical" by industry experts, in part because it "ignored all the DOT inconsistency rulings as well as the Rhode Island decision and upheld the NYC rules as constitutional and consistent with the HMTA."

The ruling relies heavily on 49 C.F.R. 397.9(a), a longstanding regulation promulgated under the Interstate Commerce Act:

Unless there is no practicable alternative, a motor vehicle which contains hazardous materials must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys. Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with this paragraph. (p. 2400)

The ruling affirms Judge Griesa's rulings: "We agree with Judge Griesa that the New York City hazardous gas routing requirements are constitutional because they 'are based on a legitimate local safety interest and do not impose a disproportionate burden on interstate commerce.' 515 F. Supp. at 672.

"The New York regulations plainly do not have local economic protectionism as their objective; if they did, a 'virtually per se rule of invalidity' under the Commerce Clause would apply. See *City of Philadelphia* v. *New Jersey,* 437 U.S. 617, 624 (1978). Rather, the regulations are directed at a legitimate local concern for public safety on the highways of a densely populated and trafficked area. They apply even-handedly both to intrastate and interstate commerce in hazardous gases. In cases involving non-discriminatory restrictions that incidentally affect interstate commerce while serving legitimate local interests, the Supreme Court applies a balancing test, weighing the local safety interest served against the degree of interference with interstate commerce. See e.g., *Pike* v. *Bruce Church, Inc.,* 397 U.S. 137, 142 (1970) ('Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits'). The Court has made it clear that this test, not a mere rational relation test, applies to state or local regulations to promote highway safety. See *Raymond Motor Transportation, Inc.* v. *Rice,* 434 U.S. 429, 442–43 (1978). Nonetheless, '[i]n no field has . . . deference to state regulation been greater than that of highway safety regulation,' id. at 443, and highway safety regulations enjoy a strong presumption of validity. (pp. 2401–2402)

"We agree with Judge Griesa that 'the Fire Department regulations, as enforced . . ., are entirely consistent with, and in furtherance of, the federal regulations and their underlying purposes,' i.e., to protect against risks to life and property from the transportation of hazardous materials. 15 F. Supp. at 671. First, there is no direct conflict between the New York City routing and curfew regulations and the federal regulations such that compliance with both is a physical impossibility, see *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142–43 (1963). The New York City routing requirements impose only a necessary delay, and allow a practicable alternative to travel through a heavily populated area, such as 49 C.F.R. §§ 177.853(a) and 397.9(a) permit. Thus as in *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 540 (1977), 'it would be possible to comply with the state law without triggering federal enforcement action.' See also *Buck* v. *California*, 343 U.S. 99, 101–02 (1952).

"Second, the New York City regulations do not 'stand [] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,' *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941), as they plainly promote safety, which is the goal of the HMTA, while they do not overlap with any specific directives of the Secretary. The Secretary has not issued, and cannot practicably issue, specific routing requirements for localities, whose own agencies are very likely far better equipped to do so. Thus while Congress did indeed express the goal of national uniformity when it enacted the HMTA, this goal has not been extended by the Secretary to embrace the local routing necessary to avoid the very dangers contemplated in 49 C.F.R. ss 397.(a). (pp. 2405–2406)"

Boston's ban of its downtown area to a broad range of hazardous (including nuclear) materials shipments was upheld in Federal District Court.

On April 6, 1981, Judge Mazzone in a significant ruling refused to declare invalid the bulk of Boston's broad city ordinance. His decision discussed briefly some of the key issues and seemed to indicate that at a later trial he would again uphold the city's regulations *(American Trucking Association, Inc., et al.* v. *City of Boston, et al.*, C.A. 81–628–MA):

"The challenged rules prohibit the use of streets in Boston's Downtown Area for transportation of the described hazardous materials on weekdays between the hours of 6 a.m. and 8 p.m. The rules also prohibit the use of city streets, in any area within the city and at any time, for transportation of hazardous materials whose point of origin or destination is outside the city. On application, exceptions to these regulations may be made by permit, specifying routes and other limitations, after a showing of compelling need consistent with the public interest. (p. 2)

"Boston's unique geography and the accidents of its historical development have resulted in a highway system that is peculiarly vulnerable to the dangers of transporting hazardous materials. A major inter-state highway, U.S. Route I–93, passes through the City of Boston and through its downtown area, the most densely populated area in New England. Because of Boston's early growth, portions of the highway section passing through the city are underground or elevated up to 30 feet above city streets. Trucks carrying hazardous materials must, under existing law, leave the highway before entering the Dewey Square tunnel and navigate narrow and congested downtown streets before reentering the highway. North of the tunnel, trucks must pass above the city's main downtown area, with a working day population density of 99,625 persons per square mile. From these facts, it is obvious that the continued transportation of flammable, explosive, and radioactive materials through the City of Boston posses serious risks to the city and to the public (pp. 4–5)

"The plaintiffs' main challenges to the regulations are that they are preempted under the HMTA by reason of being inconsistent with federal law and that they impose an unreasonable burden on interstate commerce in violation of the Commerce Clause.

"The HMTA provides for federal regulation, by the DOT, of the interstate transportation of hazardous materials. The Act, however, expressly permits state regulation that do not conflict with the HMTA. Such consistent state regulations are not preempted by the HMTA. Although the Act is silent as to who is to make the determination of inconsistency, the First Circuit has held that 'either the agency or the courts' may so determine and that 'a district court is not required to defer to the DOT for determinations of inconsistency.' *National Tank Truck Carriers, Inc.* v. *Burke*, 608 F2d 819, 822 (1st Circ. 1979). Prudential considerations of deference to the Executive Branch may nevertheless be appropriate here, where the DOT has actually ruled that the ban on through travel and the 'curfew' regulations are inconsistent with the HMTA."

The DOT's ruling, however, states:

We think it possible that use of routes which avoid Boston may be appropriate. For consistency with the HMTA, however, Boston must act through a process that adequately weighs the full consequences of its routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules. We do not believe that Boston possesses institutions or has used analytical methods that can adequately and reliably accomplish this. Consequently, we have concluded that to the extent that they prevent motor vehicles from transporting hazardous materials into or through that jurisdiction, the Boston implementing regulations may cause a delay or a diversion of traffic through other jurisdictions and in this respect are inconsistent with the HMTA. Inconsistency Ruling IR-3 at 18 (March 19, 1981).

The regulation thus may not be inconsistent if the City of Boston has acted through a process that endures the representation and approval of other jurisdictions. In fact, the regulations were submitted to a state agency, the Department of Public Safety, for approval and were commented upon by the Fire Marshalls of neighboring jurisdictions, information not made available to the DOT. We therefore believe that we may find the regulations fully consistent with federal law, to the extent that they require the skirting of Boston and the curfew on its Downtown Area, without rejecting the considered and expert views expressed by the DOT.

The question of the regulations' burden of commerce requires a balancing of safety benefits with burdens on interstate commerce. *Raymond Motor Transportation Co., Inc.* v. *Rice,* 434 U.S. 429 (1978). (pp 5-7)

This ruling thus upholds the validity of curfew regulations, contradicting the opposite ruling made by Judge Boyle in the March 1982 Rhode Island decision.

Rhode Island's 1978 permit and rush-hour curfew regulations on LNG and LPG trucks were struck down in U.S. District Court.

On March 7, 1982, Judge Francis Boyle issued a permanent injunction against the most important parts of the Rhode Island law (*National Tank Truck Carriers, Inc.* v. *Burke,* C.A. No. 78-0621, U.S. District Court for Rhode Island). The state law had also been ruled inconsistent by DOT (see 44 Fed. Reg. 75566 and appeal 45 Fed. Reg. 71881). The core of the brief decision includes the standard arguments against local or state regulation:

The Rhode Island regulations must be examined in order to determine whether they conflict with the HMTA considering the full purposes and objectives of the Congress. See *Ray* v. *Atlantic Richfield Co.,* 435 U.S. at 158. It was concern about the fragmented supervision expressed by the Department of Transportation in the area of hazardous materials transportation which prompted Congress to enact the HMTA. S. Rep. No. 1192, 93d Cong., 2d Sess. 1-2, 7-9 (1974). The HMTA states that Congress' intent was "to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to like and property which are inherent in the transportation of hazardous materials in commerce." 49 U.S.C. § 1801. Additionally, the legislative history of the HMTA indicates that this Congressional purpose was to be attained by uniform, national regulations issued by the DOT which would "preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974). Therefore, while it is clear that state and localities are not prevented entirely from issuing regulations in the area of hazardous materials transportation, the scope of such regulations is limited by the dominant role assigned to the Department of Transportation by Congress. (pp. 15-16)

Radioactive materials transportation is viewed by many as a special case, but DOT has clearly chosen to put it at the leading edge of hazardous materials transportation policy-making. Top level DOT officials, we are told, deliberately chose to promulgate preemptive national routing regulations (HM-164I) only on the truck transport of large-quantity radioactive materials, apparently hoping to establish regulatory and legal precedents that could serve as a basis for later preemptive rulemaking for other hazardous cargoes and modes. What the record shows is that state and local officials are not intimidated by the attempted preemption:

"State and local laws governing radioactive materials transport continue to proliferate despite a 1982 federal regulation largely preempting local action, according to various experts in the field."

About 200 state and local jurisdictions have imposed restrictions on the transportation of radioactive materials, according to Howard Dugoff of the U.S. Department of Transportation (DOT) Research and Special Programs Administration. Another 40 are already in 1983 legislative hoppers, said Julie Jordon of the National Council of State Legislatures. Both recently addressed Patram '83 in New Orleans a conference on the packaging and transportation of radioactive materials.

The shipping situation was supposed to imporve beginning February 1, 1982 when DOT implemented the so-called HM-164 rule setting forth government requirements for the transportation of radioactive materials under the 1974 Hazardous Materials Transportation Act (HMTA). HM-164 generally prescribed the use of interstate highways and beltways unless a state could support use of an alternative route with a safety analysis. HM-164 expressly preempts local rules which don't meet federal requirements.

However, as pointed out by Omer F. Brown II, formerly of the Department of Energy (DOE), and now a partner in Schwartzstein and Brown, in Washington, D.C., at least 258 new state or local restrictions have been introduced since HM-164 went into effect 15 months ago, and 23 of those restrictions have been enacted. Brown said, "This seems to indicate that HM-164 is hardly discouraging states and localities from imposing their own safety standards." (Nuclear Fuel, June 6, 1983, McGraw-Hill)

DOT's HM-164 rule has been challenged in court by the Ohio Attorney General and by New York State/New York City. In the New York City case, Judge Sofaer issued a decision on May 5, 1982 that allows to stand New York City's ban of large quantity radioactive trucks. The judge relies on the National Environmental Policy Act (NEPA) and the Hazardous Materials Transportation Act (HMTA) as the relevant legislation in this case. The Judgment finds HM-164 arbitrary and capricious and in violation of NEPA and HMTA to the extent that the regulations are implemented to preempt state and local bans on the highway shipment of spend fuel and other large quantity radioactive shipments without adequate risk analysies and an examination of alternatives. It specifically enjoins implementation of the regulations to preempt New York City's ban on such shipments until DOT has complied with NEPA and HNTA requirements.

The judge refers to DOT's assessement of the risks of nuclear transport as "misleading" (p. 69), "crude and simplistic" (p. 56). He charges that DOT "failed adequately to evaluate and address itself to the problems posed by low-probability/high consequence occurrences" (p. 2)—i.e., accidents or sabotage incidents in urban areas, which even DOT concedes are "credible".

Contrary to NEPA requirements, the judge says, DOT "refused" to consider "alternatives to highway transport that might reduce or eliminate the risks posed to urban areas" by accident or sabotage. DOT should have considered "nonhighway modes"—e.g., barge and rail—"to accommodate shipments prevented by local and state laws from crossing densely populated areas." (p. 3).

The final judgment imposes heavy new burdens on DOT under its HMTA mandate. The judge declares first that: Apart from DOT's obligation under NEPA to evaluate more fully the environmental consequences of its proposed rule, HMTA imposes similar duties on DOT and in addition sets limits on the agency's authority to deem certain risks acceptable. For the same reasons DOT's analysis is invalid under NEPA, its adoption of the challenged rule was an arbitrary and capricious exercise of its rulemaking authority under HMTA: DOT inadequately considered the risks of highway transport and the need, given potential alternatives, to impose those risks to the public. Further, DOT erroneously concluded that it is free under HMTA to subject unwilling states and localities to risks of potential catastrophe that DOT itself deemed "credible" and "important" when those risks are avoidable. HMTA mandates that in exercising its regulatory power DOT *avoid where reasonably possible all significant risk* not inherent in the transportation of spent fuel and other large-quantity radioactive materials, DOT must be guided by Congress' policies, not by its own perception of acceptable risk. (p. 3) (Italic supplied in all quotes from the decision).

The judgment seems to indicate that DOT, not the shippers or carriers, may chose the safest routes and modes for all highly hazardous shipments (including non-nuclear ones).

[DOT's HM-164] is invalid insofar as DOT relied in issuing the challenged rule on the view that HMTA forbids or discourages DOT interference with carrier choice of transportation modes, and on the view that HMTA permits DOT to deem certain levels of "credible", high-consequence risk *acceptable even though avoidable.* HMTA mandates that DOT, in exercising its broad regulatory powers, adopt reasonable measures to maximize safety in hazardous-materials transportation. (p. 106)

As justification for limiting its proposed regulations to the highway mode DOT sometimes states, and frequently suggested, that it was either required or authorized by HMTA to limit itself to evaluating the propriety of modal choices made by industry. (p. 106)

It is, in other words, impermissible, in the face of a credible risk with substantial potential consequences, for DOT to declare a certain level of safety "acceptable" regardless of the possibility of achieving higher levels through reasonable measures. (pp. 108–109)

The judge notes that Congress directed DOT in 1974 to report on the "feasibility of alternative routing [of hazardous shipments] to avoid population centers". DOT itself, moreover, has "viewed its own mission as a broad zone defined by a predominant concern for safety", aiming at "the elimination of the risks involved in the transportation of hazardous materials". (pp. 110–112).

HMTA contains no restrictions on DOT's obligation to minimize risk. Its general declaration of policy does not even expressly require DOT to balance commercial interests against safety interests. Rather, it says:

It is declared to be the policy of Congress in this title to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce. (p. 113)

Nothing in this broad definition of DOT's regulatory authority, read in light of the safety goal of the statute, suggest that DOT obliged, or is even permitted absent good reason, to acquiesce in a carrier's choice of transportation mode. (p. 113)

Perhaps most significantly, the judge directs DOT to consider the option of "no transportation" of nuclear and other hazardous materials:

In accordance with the decision Congress made . . . [in 1976 to ban most radioactive shipments from passenger planes], HMTA should be read as requiring DOT in regulating to investigate potentially safer alternatives to any mode of transportation under consideration or permitted by DOT, and to choose the safer alternative (including the alternative of no transportation) absent a conclusion that doing so would be unreasonable or would interfere with some other national policy. Any narrower interpretation of DOT's obligations under HMTA would conflict with Congress' clear intent, as reflected in the history and language of the statute, to promote safety where reasonably possible. (p. 117)

The judge focuses sharply on the "need to ship" issue: Thus, [DOT] failed to develop a record that demonstrates some need for overriding local rules keeping spent fuel and other large-quantity shipments out of densely populated areas. Commenters charged that no real need exists for DOT's action, and that its routing rules as they relate to spent fuels are "nothing more than a method of accommodating the transportation requirements of the nuclear power industry". 46 Fed. Reg. 5299.

The judge specifies a method by which other states, counties or cities wishing to ban nuclear truck shipments from densely-populated areas can get the protection of his ruling and avoid DOT Preemption.

DOT has appealed this decision to the U.S. Court of Appeals.

WHY ARE STATE AND LOCAL INITIATIVES NECESSARY

It can no doubt be argued convincingly that state and local resources for emergency response, planning, and enforcement of hazardous materials transportation regulations already clearly outstrip federal efforts in these areas. In addition, many local and state officials currently rely heavily on the shippers of hazardous materials for expertise in training ER personnel in dealing with specific products. We should consider to what extent the federal government can augment these decentralized efforts and to what extent the systematic upgrading of state and local capabilities can be accomplished through funding mechanisms that do not entail more burdensome federal, state or local taxes.

The crucial questions to ask about increasing the safety of hazardous materials transportation are:

What do we need?

Who can provide it?

What resources can be tapped?

In brief, what we will suggest is that:

What we need are specific major improvements in the regulation of hazardous materials transportation in a sophisticated program of prevention of as many serious incidents as possible and major upgrading of emergency response capabilities at state and local levels.

Who can provide it are citizens and their elected officials on the state and local—sometimes on the regional—levels. This positive judgment necessarily entails the corresponding negative judgment that the federal DOT cannot do the job.

The resources available, both training expertise and funds, are in large part in the private sector, as they always have been. They can be tapped through state and local—perhaps regional—user fees. These permit fees can be collected from the shippers of hazardous materials and specifically earmarked for the enforcement, emergency response training and equipment, and other regulatory needs of areas which need them because of their location in hazardous materials transport corridors.

What is needed to improve safety in the current system of hazardous materials transportation? A short list that many could agree on would include the following, divided into two main categories:

I. Prevention of hazardous materials incidents.

A. Enforcement, necessary to ensure compliance with laws. In the near-total absence of federal enforcement, some states (notably Illinois) have begun to take up the burden.

B. Better containers and vehicles. (Further discussion later on this point.)

C. Selection of routes and modes to minimize risks, based on risk analyses (reflecting state and local political judgments as to what weights to assign various categories of people and resources to protect)

D. "Additional protective measures whenever hazardous materials are transported through areas of particular high risk." (S. 1108, Section 405)

While clearly suggesting various specific local remedies such as time-of-day restrictions, urban area "gateway" systems for hot box detection, speed limits, etc., logically these prevention factors could result in local or regional bans of some hazardous materials as too dangerous to transport at all or through certain areas.

II. Emergency response capabilities.

A. Training.

B. Equipment.

C. Information and response methods.

Cargoes in the area (prenotification of some).

Who can provide these crucial improvements in harzardous materials transportation? It will be argued that because hazardous materials transportation is in large part inter-state in nature (and because there is an HMTA and a U.S. DOT) and because large safety questions require large resources and sophisticated expertise, that the federal DOT can or should play a large role or even the predominant role in upgrading the safety of hazardous materials transportation. We argue, on the contrary, that serious but only very modest demands should be placed on DOT, and that state and local governments should be encouraged and assisted to provide the needed improvements in most cases.

Even otherwise somewhat sensible people like the Transportation Research Board (TRB) of the National Academy of Sciences fall into a puzzling "Let DOT do it" approach (in their June 3 release of the Williamsburg Conference Report) while at the same time—

(1) lambasting DOT for not doing a good job up to now, and

(2) suggesting that DOT needs to create a new "body" of corporate leaders and public officials to assist DOT in implementing TRB's recommendations on upgrading hazardous materials transportation safety, hardly a vote of confidence in DOT's own resources.

One of the TRB's main experts in hazardous materials transportation quoted the following 1974 DOT analysis of DOT's then-extant regulatory system: (italic supplied)

"Ever since the inception of hazardous materials control in transportation by passage of the Transportation of Explosives Act of 1908, there has been *no real direction or coordination in this important safety function.* Parts and pieces have been added when the needs were demonstrated by *severe accidents and catastrophes,* or to accommodate the needs of individual manufacturers and shippers. The body of laws and regulations has grown like 'Topsy', piece by piece, package by package, rule by rule. As a result, the structure today is an *ill-fitting, ramshackle, largely out-of-date set of confusing and conflicting requirements.* The diffusion of authority among and between four-modal administrations results in overlapping gaps and different treatment of the same materials in different transportation situations." (Ray Scanlon, Chair of TRB Steering Committee, "Transporation of Hazardous Materials, Toward a National Strategy", p. 2)

Fully seven years after passage of the HMTA in 1974, one might have thought some improvement could have been noted. But as Chairman Scanlon reports on the findings of the most recent high-level Williamsburg Conference (1981), the inadequacies of the federal program remain serious: "Briefly, the findings of the Committee indicate that there is no agreed-upon hazardous materials transportation *goal* within the government-industry complex, due largely to a lack of defined purpose underlying the Federal regulations; in addition, we have found that the roles of the Federal, state and local governments have never been clearly and understandably *defined,* which has led to interjurisdictional *confusion* and the proliferation of inconsistency rulings resulting in court cases that are currently being heard around the country. In addition, it was found that there is *no successful enforcement program at the* Federal level and, therefore, there exists no developed concept on how to best achieve compliance with those measures that will effect the greatest safety. The Committee has great concern with the fact that there is *no systematic Federal approach to training* with respect to hazardous materials transportation and is concerned that this deficiency is aggravated *by and inconsistent with the pre-emptive role claimed by the Federal* government." (Scanlon, pp. 3–4) (italic supplied)

Another eminent TRB expert, Larry Bierlein, reported findings from the same conference's Committee on Legal, Regulatory and Institutional Issues. It is impossible not to notice here the strain between TRB's critique of DOT and recommendations that it assume a "dominant" role:

The current program of hazardous materials transportation regulation is not working satisfactorily. Although substantial improvement in the program is necessary, the committee at no time found that public safety warrants the curtailment of transportation of any hazardous materials, in any location. These materials are essential to the functioning of our society, and their transportation is vital.

The current hazardous materials and hazardous waste transportation regulatory program lacks an agreed upon and distinct purpose or goal. Thus, there is no clear measure of the size of the job, no indicator of when the job is done, and no means of assessing the quality of the effort. Lack of a clear purpose or goal undermines any effort to plan for the future. There is no long-range regulatory plan as a result. Further, without a statement of purpose or defined goal, there is no systematic means by which to set priorities and, indeed, priorities have not been set.

The inability of any parties to plan for the future also means that none can budget for it either. Affected parties included all relevant federal agencies, nonfederal government agencies, and industry.

Not knowing the goal, it has been impossible for the variety of involved agencies to know their respective roles in achievement of that goal. Particularly in the vertical dimension, from federal to regional to state to local government, confusion in roles has led to conflicts affecting everyone.

The strongest recommendation is that there be a dominant federal agency with the affirmative duty to resolve the difficulties represented by these findings and recommendations. That agency should be the U.S. Department of Transportation. The Department of Transportation today is not discharging this function.

There are not consistent, systematic regulatory controls over hazardous materials transportation. Among other things, this is attributable to the lack of functional quantitative data describing the transportation environment, and failure to define levels of risk.

Pervasive inconsistencies in regulation also flow from the evolution of regulatory controls over most of a century, with each rule designed to cope with a single circumstance. Decades of spot changes to the fabric of regulation have left a patchwork, not a system. Symptoms of this are the prolific cross-references, exceptions and provisos that impair the readability of the regulations. This also has led to undue rigidity in regulatory controls, stifling innovation and competition, and making cumbersome exemption procedures necessary.

Another strong recommendation of the committee is that a body be established to advise and assist the Department of Transportation in its deliberations.

We quote at length from these national TRB experts in order to suggest some reasons based on recent past performance why one should *not* count on DOT for serious safety improvements in hazardous materials transportation. Further damaging evidence could easily be piled up from the recent critical evaluations of DOT's regulatory program in HMT by the U.S. General Accounting Office (CED–81–5 and CED–82–51) and the National Transportation Safety Board (SEE–79–2, SEE–81–2 and SEE–81–2).

Just one statistic might help illustrate the utterly ludicrous level of DOT regulation of hazardous materials transportation. A 1978 U.S. Senate Commerce Committee report revealed that DOT was responsible for regulating 412,800 tank trucks that regularly transported hazardous materials. DOT at that time had exactly nine full-time inspectors, and one can safely suggest that the situation remains about the same. Some Industry spokesman who testified at that time to the Commerce Committee stated that such low levels of inspection and enforcement predictably brought low levels of compliance from a competitive industry, some of whose members would be tempted to cut corners on safety-related compliance expenses.

It is difficult for a fair-minded person not to conclude that this clearly token system of federal enforcement exists mainly so that state and local regulation of hazardous materials transportation can be quashed in court as allegedly preempted by a pervasive federal regulatory program.

Several elements seem required in order for a regulatory body to do the painstaking work of implementing regulations that genuinely improve the safety of hazadous materials transportation: authority, vision, funds, a manageable scope of responsibility, a felt need to solve problems in safety.

DOT manifestly has the first. The HMTA clearly gives DOT quite a wide authority to make regulations so long as these truly improve safety in hazardous materials transportation.

What can be seen, however, is that DOT has in major instances not exercised that authority wisely or promptly:

The federal (and industry) safety assurances for hazardous materials transportation (including nuclear)—and the consequent federal opposition to state and local routing regulations or bans of highly populated areas—is based on the federal approval of the design of the containers (with no significant effort to inspect containers in use). In recent years, however, the safety adequacy of several major hazardous materials containers has been severely and credibly challenged:

(1) Railroads have been forced to add head shields and shelf couplers to their rail tank cars after a series of three disastrous explosions in 1976–77.

(2) Of the 17 existing nuclear spent fuel casks, 10 have been withdrawn from service. All of the major rail casks made by General Electric have pressure release valves of faulty design.

(3) The major gasoline truck tanker, the MC–30.6, has been found by DOT studies to be a leaker, that is, not meeting its DOT specifications of holding its cargo in an overturn situation—clearly a design problem of enormous import.

DOT has a long-standing and completely unenforced and ignored regulation (49 CFR 397.9) that forbids transport of hazardous materials through densely populated areas, tunnels, etc., unless no practicable alternative exists. (Armour Oil Company sent its gasoline tankers through the Caldecoot Tunnel near Oakland, California until the April 7, 1982 disaster that caused 7 deaths and major damage to the tunnel.)

But DOT did not begin to promulgate preemptive regulations on the routing of hazardous materials (and then only on the highway routing of radioactive materials) until New York City virtually banned nuclear spent fuel shipments in 1976.

The resulting DOT regulation, HM–164, was specifically described by DOT as a response to New York City's ban, and is widely regarded as a political response to local and state safety regulation viewed as inconvenient by the shippers and carriers of hazardous materials.

DOT's preemptive rule was challenged in court by Ohio and New York State/New York City in two separate federal courts. When in the New York case Judge Sofaer in May 1982 upheld the city's ban of large quantity radioactive shipments, citing the huge potential accident risks and the availability of alternate routing, DOT responded by appealing the decision.

DOT's hard-line approach is clear: DOT feels that New York City may not force hundreds of annual nuclear spent fuel shipments to use barge routes that avoid Manhattan.

DOT's few administrative inconsistency rulings have likewise been nearly always directed against the state or local regulations in question as inconsistent with federal law. This painfully slow process is clearly still evolving as far as a coherent set of DOT preemption principles is involved. One recent 1981 major ruling, IR–3, in its main impact declaring Boston's routing regulations invalid, was revised just one year later to a ruling that no ruling could be made. DOT's inconsistency rulings are not usually given deference by the Federal courts, possibly because DOT is not seen as a neutral arbitrer of hazardous materials safety in disputes between shippers and state or local governments.

EMERGENCY RESPONSE: NEED AND COSTS

There clearly is a great need for substantially more training for emergency response (ER) personnel—the foremost case in point being the 1977 Waverly, TN rail disaster in which a tank car exploded after two days of dose-monitoring by police and firemen, killing 19 ER personnel incuding the fire chief and police chief. Other evidence comes from recent accidents in which emergency responders unwittingly exposed people to more chemical dangers through uncoordinated on-scene action or through incorrect mitigation procedures:

In the April 3, 1980 rail yard accident in Sommerville, MA, a tank car carrying 13,000 gallons of a corrosive liquid, phosphorus trichloride, was punctured:

"The product spilled onto the most ground and created a cloud, which ultimately necessitated an evacuation of a 1½ square mile area containing 23,000 people. During the first 48 hours of the emergency, 418 persons were treated at the Somerville hospital. Damage to train equipment amounted to $8,100 and cleanup costs were reported to be $130,253.

"The community of Somerville is a highly populated industrial and residential area covering 6 square miles with over 80,000 residents. Somerville is located directly north of Boston and is bounded by Boston, Cambridge, Arlington, Medford, Everett, and Chelsea." (NTSB, Phosphorus Trichloride Release in Boston and Maine Yard 8 during Switching Operations, Somerville, MA, April 3, 1980, page 2)

"More than 30 local, State and Federal safety representatives at the command post" met to advise the fire chief, who was advised by EPA to follow the 1978 DOT guide recommendations to use "flooding amounts of water". On three occasions over a six-hour period, the fire chief's water attacks created billowy clouds and eventually necessitated the evacuation of 30,000 people. Neither Monsanto's response team nor the on scene technical advisors could agree or provide reliable advice despite more than seven hours at the scene, according to NTSB:

"The analysis of the difficulties observed at Somerville indicates that some of the advice and guidelines provided to emergency response personnel by DOT, carriers, and shippers continues to be inadequate, inconsistent, and confusing." (NTSB, Phosphorus Trichloride Release in Boston and Maine Yard 8 during Switching Operations, Somerville, MA., April 3, 1980, page 2)

One year later there was little observable improvement: "Firefighters who responded to a Somerville, MA, rail tank car phosphorus trichloride spill a year ago say they are no better prepared for that sort of emergency today than they were then, according to a published report. Somerville Fire Chief Charles Donovan pointed out to a Boston Globe reporter that the DOT emergency-response guidebook still says to use water on the chemical, adding "Boy, we learned the hard way that was the wrong thing to do." The resulting acid cloud forced the evacuation of 30,000 people, sent 70 to hospitals, and corroded paint and metal on emergency vehicles. No one was killed but several responders apparently still suffer respiratory ailments. (Hazardous Materials Transportation, May 1981, p. 7)

The NTSB report succinctly summarized the need for further ER training for hazardous materials transport incidents:

"The National Transportation Safety Board has investigated several accidents in which local safety officials, carriers, and shippers, because of inadequate guides or technical advice, have been forced to use trial and error to try to control the effects of hazardous material releases in rail tank car derailments. For example, following a derailment in Pensacola, Florida, on November 9, 1977, the Pensacola fire chief had to improvise a method for back flushing a damaged tank car of ammonia in order to reduce the amount of ammonia which could have escaped into the community. Following a train derailment at Youngstown, Florida, in February 1978, after discovering that a chlorine tank car could not be patched, safety officials had to devise a special disposal procedure using an open-air pit to neutralize the product. Following an April 8, 1979, derailment near Crestview, Florida, an onsite disposal plan was improvised to neutralize chlorine at the site using an open pit. Following a train derailment near Molino, Florida, in November 1979, safety officials used explosives to control risks from burning LPG tank cars. Following a derailment near Inwood, Indiana, on November 8, 1979, ethyl acrylate was released and contaminated ground water. As a result, an extensive ground water cleanup and purification project had to be implemented." (NTSB, Phosphorus Trichloride Release in Boston and Maine Yard 8 During Switching Operations Somerville, MA., April 3, 1980, page 1)

On-scene coordination of ER personnel is a widely acknowledged problem. In its analysis of the "confusion" at the accident scene of the March 31, 1977 railroad accident near Rockingham, N.C., in which 17 different federal, state and local agencies responded, NTSB concluded that existing ER planning is inadequate. (NTSB-HZM-79-3, "Onscene Coordination Among Agencies at Hazardous Materials Accident", 1979)

The most recent example perhaps of the need for better training for both local ER personnel and transport workers and management is the May 31, 1982 Colonial Heights, VA derailment. As the National Transportation Safety Board summarized:

"Cars No. 89 through No. 118 derailed. A tank car was breached in the derailment, and its contents were released and immediately ignited. No crewmembers were injured as a result of the accident, but 12 firefighters and a state emergency official collapsed during firefighting operations. Erroneous and conflicting information concerning hazardous material on the train caused confusion and resulted in misdirected emergency response efforts.

Contributing to the severity of the fire and to the ineffectiveness of the emergency response was inadequate training of railroad operating personnel and on scene railroad management." (NTSB/RAR-83/04, "Railroad Accident Report, Derailment of Seaboard Coast Line Railroad Train No. 120")

Recent experience from Ohio gives evidence both of state-level initiative and responsibility and of the need for expensive training and equipment:

"Ohio was the first state in the country to initiate a computerized fire reporting system. Statistical data developed as part of the fire reporting system indicated that injuries to firefighters tended to increase with fires involving hazardous materials and chemicals. One chemical fire in the northeastern portion of the state resulted in the hospitalization of 116 firefighters, while an incident on the Ohio Turnpike injured seven state highway patrol officers. A review of actual experience indicated two major areas of need: provision of hazardous materials-related training for firefighters, and provision of specialized tools-equipment/materials needed to respond safely to hazardous materials incidents.

"The more we got into it, the more we discovered that the way fire departments had trained over the years was detrimental to them as far as hazardous materials were concerned," reflects Donald R. Ryan, Chief of the Hazardous Materials Bureau, division of the Ohio State Fire Marshal. "They were taught to rush in and make a rescue, that water was their most important response too; techniques that are a 'No-No' when hazardous materials are involved. Our plan here in Ohio has been to educate the fire service, and to come up with response vehicles equipped with the necessary tools/equipment/materials required to supplement the tools and equipment of local fire departments so they can get the job done."

"We were fortunate that we were able to obtain federal funds to equip response vehicles, and buy special training materials for the Ohio Fire Academy training ground that enabled us to provide hands-on training," continues Ryan. "We started out with one response vehicle the first year and put over 40,000 miles on the odometer. We eventually established five response units, one here at Reynoldsburg in the central portion of the state and four others located at strategic locations in the four corners of Ohio. The state is 230 miles long and 230 miles wide. Dealing with hazardous materials incidents, it is essential to arrive on-scene quickly. With five equipped response vehicles in-place, it is possible to respond to an incident anywhere in Ohio in less than a hour."

Providing much more ER training, however, and the equipment that can make the training effective, is very expensive. Denver Fire Department officers in charge of training estimate at $1500 the total cost of sending one person to a national training center for a two-week course.

These same officers say their experience suggests that the "training trainers" concept does not work in practice. There seems to be no substitute for very expensive, lengthy, and hands-on training in fairly small classes with experienced professional trainers.

Some jurisdictions are finding innovative ways to fund a large upgrading of ER training. The Denver Regional Council of Governments (DRCOG), for example, recently submitted a grant proposal for state funds totaling $680,000 from energy severance tax coffers. Other jurisdictions are clearly interested in the more universally accessible mechanism of user fees on the shippers of hazardous materials, such as are already being utilized by several jurisdictions to fund their inspection and enforcement and overall regulatory program for the shippers of hazardous wastes and nuclear materials.

No one seems to have done a thorough study of how much it would cost to fund an upgrading of ER personnel training and equipment that would be more than a token effort. The Denver Regional Council of Governments proposal estimates new equipped ER vans at $100,000 each. The alternative of scrounging old trucks and equipment is better than nothing, but often requires extensive maintenance work just to keep the vans running. The Denver metropolitan area has two ER vans available already. DRCOG's cost estimates for training vary widely for three different levels of training:

Level 1—2 days, 1,000 trained—$60 each.
Level 2—2 weeks, 400 trained—$240 each.
Level 3—4 days, 100 trained—$136 each.

A list supplied by nationally known expert John Cashman of ER courses for private company personnel gives some idea of the training costs:

	Per trainee
1. Texas A&M, "Haz Materials Control"—[5 day]	$500
2. Texas A&M, "Oil Spill Control"—[5 day]	535
3. Texas A&M, "Tank Truck Rollover"—[2½ day]	275
4. N.S.C. School, "Haz mat./Haz Waste"—[5 day]	525
5. N.S.C. School, "Oil Spill Prev/Control"—[5 day]	525
6. CMA, "Emerg. Response Team"—[2 day]	200
7. Safety systems, "Hwy/Truck Haz Mat."—[1 day]	35

	Per trainee
8. Safety systems, "40-hours Haz. Materials"—[5 day]	235
9. Govt. Ser. Inst., "Tranp. of Haz Mat-REGS"—[5 day]	525
10. Haz. Mat. News, "Haz. Mat for Inc. Com."—[1 day]	40
11. National Draeger, "Trng. Gal-Resp. Prof. Dev"—[2 hr]	25
12. EPA,[1] "Pers. Protection & Safety"—[5 day]	110
13. EPA,[1] "Incident Mitigation & Treat"—[5 day]	110
14. EPA,[1] Field Monitoring & Sample—[5 day]	175
15. EPA,[1] Haz Mat Incident Resp. Ops.—[5 day]	110
16. EPA,[1] Haz Eval & Environ. Assess.—[5 day]	110
17. EPA,[1] Respiratory Protection—[3 day]	72

[1] Subsidized by Federal government. No charge to personnel from federal, state, local agencies involved in emergency responses and activities related to abandoned hazardous waste sites. Fees quoted are for private industry.

Even though S. 1108 contains no explicit funding levels (only "such sums as shall be required . . ."), a $60,000,000 federal grants program has been the figure discussed with interested parties. Any judgment on whether this would be adequate or a relatively small beginning must await some survey of the needs in various areas as well as a national projection based on detailed local/regional data.

The U.S. Nuclear Regulatory Commission has recently published a study of what a "model" state program would be for radiological ER training and equipment sufficient for radioactive shipment accidents. The NRC study estimates a state program with 10 four-person response teams and 2 mobile ER vehicles with radiocommunications capability to base stations at $5.6 million annual operating costs plus about $270,000 for vehicles and equipment. This is for radiological incidents only. (U.S. NRC, "An Unconstrained Overview of the Critical Elements in a Model State System for Emergency Response to Radiological Transportation Incidents," NUREG/CR-2225, 1981)

To our knowledge no such "model" state ER program study has been done relative to the transport of other hazardous materials. Perhaps DOT might fund such studies on a regional level, to account for different ER needs in different hazardous materials transport corridors, as an extension of the six regional studies just completed.

If state and local governments assume the burdens of compensating for the shortfall in federal safety regulation, the most equitable method would be to assess the shippers whose cargoes put the community at risk. This user fee method has the advantages of rationally allocating the costs of necessary ER planning, training and equipment to the private sector. Product costs will presumably rise in such a way that the "true cost" of the product (including necessary safety precautions) will be reflected in the final market price. The current Republican administration has made extensive use of such user fees, for example, in regard to federally subsidized waterways.

Finding equitable user fee assessment systems will not be a straight forward task. Apparently the recent "Denver coalition" effort to do so has been unsuccessful to date. All the more reason, in line with the Brandeis "states as laboratories" idea, to allow and encourage local and state governments and interested industries and citizen groups, to fashion various systems and see what works. The recent experience in New York City, of local officials negotiating with industry representatives on the phased implementation of the city's hazardous materials truck regulations, may be offered as one possible model of the pragmatic give-and-take that will no doubt characterize the successful operation of new fee systems.

WHAT DOT DOES BEST: A CASE STUDY OF RESEARCH ON RAILROAD REROUTING TO AVOID POPULATED AREAS

If adequately funded, federal safety research, as in the case of the leakage problems with the most-used gasoline tank trucks, can be very useful. California Highway Patrol officials, for example, would like to see DOT put some effort into designing a tank truck that is more crashworthy than the thin aluminum-skinned shells now in use for 100,000 gasoline deliveries per day.

The routing of hazardous cargoes to avoid highly-populated areas is one area in which DOT research could help bring a substantial improvement in safety. In the 1976 Houston, TX anhydrous ammonia release following the highway crash of a tank-semitrailer, five persons died and 178 were injured. In the ensuing investigation NTSB Concluded that DOT's current safeguards were of no help, but suggested that intelligent and up-to-date control by city officials of the routing of hazardous cargoes could have reduced casualties:

"Federal safeguards are involved in four major areas of the accident: (1) 49 CFR 178.337 prescribes specifications for MC 331 cargo tanks for anhydrous ammonia; (2) 49 CFR 172 contains hazardous materials identification and communication regulations; (3) DOT guidelines for handling hazardous materials emergencies; and (4) 49 CFR 397 restricts routes used by hazardous materials carriers. However none of the safeguards for MC 331 cargo tanks prescribed by 49 CFR 178.337 prevented the large-scale abrupt breakage and complete release of the product within several seconds. The marking, placards, and labeling prescribed in 49 CFR 172, Communication Regulations did not help persons involved to identify the nature of the threat to communicate what actions to take, or to help to control the emergency. The current DOT evacuation guidelines could increase rather than reduce injuries in some accidents. Conditions have changed since I-610 was selected and specified [by the city of Houston] as a hazardous materials route. In the absence of periodic review procedures, the route's change to a higher risk area [because of population shifts near the route] was not identified. (NTSB, Survival in Hazardous Materials Transportation Accidents, pp. 21-22)

NTSB noted the previous enactment of routing ordinances by Houston city officials and that the ordinances had not been reviewed and modified with population changes:

"Routing.—Title 49 CFR 397.9, routing requires that motor vehicles containing hazardous materials be operated over routes other than those through heavily populated areas. Additionally, 49 CFR 397.3 gives blanket approval for State and local route controls for hazardous materials motor vehicles unless these local laws and ordinances contradict DOT regulations. In order to "help carriers more easily determine the fastest and safest routes," the Federal Highway Administration publishes a pamphlet, "A Summary of Highway Facilities where Hazardous Materials are Restricted," listing 20 States and routes where transportation of hazardous materials is restricted or prohibited.

The use of designated routes for hazardous materials is a widely recognized safety measure to reduce risks. In 1970, after a series of gasoline semitrailers accidents in crowded urban areas of Houston, city officials passed Ordinance No. 70-180 to place hazardous materials vehicles on less crowded routes where the density of traffic and surrounding population was relatively low and relative vehicle speeds were similar. As a result, I-610, a 38-mile circumferential highway surrounding the city, was posted as a hazardous materials transportation route, and all vehicles transporting hazardous materials through the city were restricted to this route. In 1970, I-610 was not heavily traveled and had few office buildings nearby. By 1976, the vehicular traffic had increased to more than 70,000 vehicles daily, and high-rise commercial and residential complexes lined the entire route. Consequently, the routing safeguards designated by the city of Houston in 1970 did not prevent this accident from affecting 183 of the estimated 500 person who were within 3,000 feet of the accident at the time of the ammonia release." (p. 26) (emphasis supplied)

NTSB found in the Houston accident that longer reaction time (because of distance from the ammonia release) considerably improved chances of survival. NTSB therefore recommended "improved routing controls":

"Local routing controls should provide for periodic review and assessment to reflect changed exposure potentials due to changing urban environments. Hazardous materials accidents are infrequent in most communities, so it is extremely difficult to determine the best routes from experience. No guideline for selecting the best routes exist, nor has survival action data that could form a basis for their selection been collected. Consequently, local officials and carriers must make decisions affecting hazardous materials routing on the basis of their limited experience and best judgments without access to safety analysis capabilities and data at the local or national levels. Without Federal guidelines or data, high-risk areas along routes are not being identified uniformly and regulatory requirements among cities will likely become increasingly inconsistent.

Because of the problem with designating routes and the changes which may occur following the adoption of a designated route, the Safety Board recommended in its Houston accident report that the Federal Highway Administration (FHWA):

Develop guidelines for local and State agencies to use in designating and periodically reviewing routes for the transportation of hazardous materials as a means of reducing injury and damage from accidents involving hazardous materials in their jurisdictions. (Class II, Priority Action) (I-77-1)

In May 1979 the FHWA contracted for the development of routing criteria for hazardous materials." (p. 30)

[Note: This research was published by FHWA Report No. FHWA/RD-80/105 "Development of Criteria to Designate Routes for Transportation of Hazardous Materials", September 1980 and in FHWA-IP-80-15 Implementation Package: Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials, November 1980. A parallel document for radioactive transport was published by U.S. DOT, Research and Special Programs Administration, "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials," June 1981. The DOT Guidelines for radioactive cargoes have been used for official route designations in only two states, Maryland and Delaware, perhaps because of the controversial recommendations in the Guidelines about what criteria to use. In California, the Highway Patrol sponsored seven public hearings on its proposed routing; the CHP proposal is now "on hold" awaiting a ruling from the California Attorney General about federal and state preemption. We know of no states that have used the FHWA guidelines for other hazardous cargoes. DOT's HM-164 and the subsequent guidelines lean heavily towards the use of Interstate highways, although with no DOT research justification.]

Interstate highways through congested cities may not be sensible routing in all cases, NTSB concludes in the Houston analysis:

The survival actions in the Houston accident suggest that the limited-access highways in congested urban areas may not be desirable for certain hazardous materials shipments. The high vehicle speeds, traffic density, lack of escape channels, inaccessibility to rescue personnel, and rapid buildup of vehicles in the affected area all suggest that operations on lower speed, lower density routes could reduce catastrophic risks for certain pressurized, liquefied gases and other hazardous materials where survival action timing and size of the affected area determine survivability. (p. 30)

In 1978 the National Transportation Safety Board advocated the designation of a national rail hazardous materials routing system, which would combine the advantages of exposing the least population and improving the quality of track through increased maintenance. (NTSB-SEE-78-2, Anaylysis of Proceedings of the NTSB into Derailments and Hazardous Materials, April 4-6, 1978)

A DOT modal unit, the Federal Railroad Administration (FRA), sponsored studies by the Transportation Systems Center of DOT on this proposal. The FRA studies found that while a "blanket" national policy of avoiding urban area without track upgrading was perhaps inadvisable, when combined with track upgrading such a rerouting policy could substantially reduce risks of hazardous materials accidents (by 25 to 50 percent). This research program has been cut short, far short of its intended purpose. Whether for budgetary or other reasons, no one in DOT is pursuing any implementation of a national route selection system for rail tank cars, nor even searching out local or regional metropolitan areas where such a rerouting policy could have the clearest benefit.

Safety improvements being after disasters. In this case, a series of disastrous rail accidents with hazardous materials in 1977 led Congress to search for ways to improve rail safety.

"In June 1978, the conferees of the House and Senate Appropriation Committees directed the National Transportation Safety Board to conduct a thorough review of hazardous materials rail shipments and the applicable track standards as well as determine how the Federal Railroad Administration can more effectively prevent the occurrence and reduce the severity of derailments of hazardous materials."

By March 20, 1979, the National Transportation Safety Board (NTSB) had recommended to the Federal Railroad Administration (FRA) that the latter "determine in cooperation with the ICC the feasibility of establishing hazardous materials routes to bypass populous areas. If hazardous materials routing is operationally feasible, require that the track on those routes be maintained at minimum of Class 4 condition."

The FRA responded to the NTSB on October 12, 1979:

"FRA has determined the high hazardous materials flow corridors throughout the United States and FRA has also located the hazardous materials movements by railroad. The data has also been disagregated by categoy of hazardous materials and has been combined with the population density information along rail routes in order to assess the current and future exposure and risk associated with the rail transportation of hazardous materials. FRA is studying the feasibility of rerouting hazardous materials shipments. Part of the feasibility study will involve one or more case studies of hazardous materials shippers."

[Note: The research documents produced include: FRA-RRS-80-04 Major Railroad Accidents Involving Hazardous Materials Release, Composite Summaries 1969-78, U.S. DOT Research and Special Programs Administration, FRA Office of Safety, July 1980 Final Report. Railroad Safety Statistics: Accident Locations/Hazardous

Materials Flows/Accidents Rates (included national and railroad-specific maps) FRA Office of Safety U.S. DOT 1981]

A May 1980 Staff Study ("an informal technical document . . . subject to change") by the DOT Transportation Systems Center's Theodore S. Glickman, "Analysis of a National Policy for Routing Hazardous Materials on Railroads", sets out its FRA-sponsored research program somewhat differently:

"A key example of potentially valuable research is the FRA's work on rerouting hazardous materials rail cargoes. In 1978, the National Transportation Safety Board advocated the designation of a national rail hazardous materials routing system, which would combine the advantages of exposing the least population and improving the quality of track through increased maintenance."

The preliminary results of the first phase of this research (which uses a sophisticated computer model of the U.S. railroad system) can be summarized thus in 4 different cases:

I. Rerouting hazardous rail shipments to avoid populated areas without upgrading any trackage, (a) while using only alternative tracks within the same railroad's systems and historical junctions between railroads will yield nearly a 20 percent increase in deaths and injuries expected (147 per year is average). (b) While using new junctions between railroads, will still yield a 10 percent increase in deaths and injuries expected.

[Glickman explains: "these aggregate national impacts arose because the advantage of reducing public exposure to hazardous materials shipments were outweighed by the disadvantages of forcing traffic onto poorer track with longer trip lengths."]

II. But "if a population-avoidance policy (is) acompanied by the up-grading of . . . . all Class 1 and Class 2 track to Class 3 standards," (a) with historical junctions, a 9 percent decrease in expected deaths and injuries will result. (b) With new junctions, a 28 percent decrease in expected deaths and injuries will result.

[NOTE: A few assumptions of the methodology used in this study will seem unduly non-conservative from a health and safety standpoint: for example, the use of population data only for persons located within one quarter-mile of the tracks. Several recent evacuations have involved people living within several square miles surrounding the track and even heavy parts of BLEVE'd tank cars have been known to rocket a quarter-mile. Also, if historical data for rail accidents are as woefully inadequate (because of gross under-reporting by carriers) as DOT truck accident data are clearly known to be, all the expected death/injury figures are clearly subject to a wide margin of error.]

The more beneficial rerouting pattern, case II(b), based on calculating direct routes using all U.S. railroads between the origins and destinations of the hazardous materials shipments also resulted in:

Increased total car miles of about 20 to 25 percent.

Increased number of carriers per car, from the usual 1.7 to 2.52.

Increased average haul from 726 to 921 miles.

Decreased total person-exposures to hazardous materials shipments by ½, from 351 million to 182 million. (Glickman, "Analysis", (p.10).

Even "a series of minor routing changes on individual railroads significantly reduced person-exposures by 86 million (25 percent) while increasing sample car miles by 840 thousand (17 percent)." p. (10)

In a follow-up study ("Rerouting Railroad Shipments of Hazardous Materials to Avoid Populated Areas" forthcoming October 1983 in Accident Analysis and Prevention journal) Professor Glickman found that population exposure to hazardous materials cargoes can be reduced up to 50 percent by rerouting, at the cost of a 15–30 percent increase in traffic circuity.

Railroads are not, it seems, interested in rerouting of hazardous materials to avoid high populations. One reason is cost; another is "competitive position":

"As a rule, railroads do not take population exposure into account when making operating decisions about the routing and scheduling of trains having cars containing hazardous materials. By reducing exposure in this way, the railroads could diminish the likelihood that persons who live and work in the vicinity of railroad tracks would be killed, hurt or inconvenienced by accidents in which hazardous materials are released. This likelihood could be made even smaller if the tracks in question were upgraded, a measure which would enhance railroad safety and performance in general. Rerouting, with or without track upgrading, is a feasible but potentially costly way to improve hazardous materials safety. A comprehensive analysis to determine the cost-effectiveness of such measures would have to account for any associated costs of operational changes and capital improvements, plus any effects on profitability due to changes in customer service and competitive position. Environmental and property damage impacts, while secondary to the immediate safety of the exposed population, would also have to be evaluated. (Glickman, "Rerouting", p. 1) (emphasis added)

Indeed, although a national rerouting policy with new interlining junctions could reduce the expected number of casualties by almost 50 percent, as Table 3 shows for the leading carriers of hazardous materials in 1977, this reduction in casualties would be achieved at the cost of often extreme changes in their shares of the total hazardous material car-miles.

TABLE 3.—HAZARDOUS MATERIAL CARMILE SHARES BY RAILROADS (1977)

	Percent--	
	Historical	Rerouting/new
Santa Fe	14	17
Family Lines	12	17
Missouri Pacific	12	7
Southern Pacific	11	8
Conrail	11	11
Southern	7	2
Illinois Central Gulf	6	12
Burlington Northern	5	[1] 7

[1] Glickman, "Rerouting," p. 8.

Upgrading all class 1, 2 and 3 track used for carrying hazardous materials in 1977 to track class 4, even without any rerouting, would drop expected casualties from 240 to 91. But this upgrading would be required on 120,000 miles of track.

"These conclusions about the aggregate national effects of rerouting do not necessarily apply to specific locations. In particular, certain densely populated urban areas might benefit greatly from rerouting, especially if there are alternatives which would not either divert traffic to poorer track, or seriously disrupt existing shipping patterns and schedules, or cause a related increase in exposure in some other population center."

More focused study by Professor Glickman on the effects of a national rerouting policy on urban areas in the aggregate shows that rerouting would be significant even without upgrading.

TABLE 4.—URBAN EFFECTS OF REROUTING AND UPGRADING—EXPECTED CASULTIES IN 1977

Track condition	Historical	Rerouting—	
		Old	New
No change	78	67	34
Upgrade classes 1, 2 & 3 to 4	66	57	24

And a firstcut study of two specific cities, Birmingham and Kansas City, shows that "a *national rerouting policy to avoid population would be beneficial for Birmingham and track upgrading would be unnecessary, whereas for Kansas City the optimum national policy would be to reroute with new interlining junctions and upgrade the track involved to class 4*. In the absence of track upgrading, Kansas City would be worse off under a population avoidance rerouting scheme involving new junctions, possibly because of the *advantage to the nation of circumventing Omaha at Kansas City's expense.*" (p. 11) (italic added)

TABLE 5.—COMPARISON OF EFFECTS IN TWO URBAN AREAS—EXPECTED CASUALTIES IN 1977

	Historical	Rerouting—	
		Old	New
Track unchanged:			
Birmingham	1.7	0.5	0.4
Kansas City	9.4	9.5	11.4

TABLE 5.—COMPARISON OF EFFECTS IN TWO URBAN AREAS—EXPECTED CASUALTIES IN 1977—Continued

	Historical	Rerouting—	
		Old	New
Track upgraded:			
Birmingham	1.7	0.5	0.4
Kansas City	5.6	5.6	1.3

These conclusions must be treated with appropriate caution. The TSC-developed methodology is only for aggregate national analysis, and not suitable for metropolitan-area scale analysis. Only one follow-up study (the "CONSAD study") of a specific regional area's rail routing alternatives was apparently funded by DOT; it allegedly was problem-plagued, offered mixed conclusions, and was not published in final form by DOT.

There is a clear opportunity, therefore, for DOT to develop further the methodology and pursue this line of research in the locale-specific applications for which the research program was intended, as the DOT researchers have suggested. Alternatively, DOT might help specific cities or regions where the most likely benefit could be attained to do their own rail rerouting studies.

[Note: One private consulting firm, ALK Associates, Inc. of Princeton, N.J., is using the general national rail-link methodology in conjuction with a major chemcial complay to evaluate competing rail-routes with a population-avoidance criterion among others. It should also be noted here that the Association of American Railroads asserted before this Committee on April 28, 1981 that the draft reports of the TSC research supported the railroads' position:

"The railroad industry is adamantly opposed to routing rail shipments of hazardous materials around population centers. Routing of trains is a decision made by railroad and shipper managements based upon may factors, including safety. In our opinion, current routing reflects the safest routing. Moreover, the Secretary has already studied this question under his existing authority and has rejected the concept.

"The Transportation Systems Center under the direction of DOT's Research and Special Programs Administration issued a draft study last year analyzing a national policy for routing hazardous materials on railroads.

"The report found that a blanket national materials routing policy, based solely on the avoidance of populated areas without significant and costly track upgrading on alternative routes, would be counterproductive."

Obviously a selective reading of the TSC research is reflected in this conclusion.]

COMMENTS ON SPECIFIC SECTIONS OF TITLE IV OF S. 1108

Section 402, "Purposes": (1) It is not at all clear that the public safety is best promoted "by . . . increased coordination . . . and greater consistency", where these are defined largely in terms of Federal preemption. Perhaps a mix of state and local regulation using various kinds of regulatory tools is necessary to determine what works best for safety.

The Hazardous Materials Transportation Act (HMTA) clearly subordinates "consistency" (of Federal with State and local regulation) to public safety; the HMTA says inconsistent State and local laws may be allowed to stand where they better serve safety. This same comment applies to the proposed HMTA Sec. 121(b)(1) under Section 405 of S. 1108.

Section 402(2). It seems crucial to set guidelines on what level of state enforcement DOT might find "adequate", since even a minuscule state effort might seem prodigious compared with the current token federal program.

The bill's current language suggests that all hazardous materials are "essential" to transport (Section 403[2]). This judgment seems to run counter to various indications that the transport of extremely hazardous materials should be minimized, if possible to zero:

Congress suggested as much in the Nuclear Waste Policy Act of 1982, urging U.S. DOE to "minimize" the transportation of nuclear spent fuel to federal AFR storage and to utilize on-site storage instead that would allow the spent fuel to cool off both thermally and radioactive.

Judge Sofaer's May 1982 decision in the New York City case states that the HMTA gives DOT, in considering the modal choices by carriers, the mandate of the "the elimination of the risks involved in the transportation of hazardous materials," and that DOT must consider "the alternative of no transportation" and choose the safer alternative if not unreasonable.

In the case of hazardous wastes, severe state and local transportation restrictions and even bans may become a well-used regulatory tool for encouraging the recycling of certain materials.

We take strong exception to "Findings" (3) and (5) in Section 403. In our view the HMTA is clearly a safety law, not a uniformity one. There is no separate federal "interest" in "uniformity" per se; only insofar as uniformity might serve the safety purpose of the Act (e.g. the same color of placards for gasoline in all states) can it be construed as an interest under the HMTA. The current language of S. 1108 tends to invent a new Congressional intent for the HMTA.

We feel that, in reard to Finding (5), there will have to be some (new) evidence brought into the record to explain the alleged link between "consistency" and prevention of hazardous materials incidents. The federal judges in the Boston and New York City cases suggested quite the opposite.

It is not all clear why S. 1108 (in Sec. 405) considers it necessary to restate that DOT has authority to establish routing regulations, since the HMTA is explicit on this point and since DOT explicitly claims to have such authority already and has exercised it in HM-164 rulemaking. It could be argued that under HMTA DOT already has responsibility to promulgate regulations in all the other areas listed in the proposed Sec. 122(a)(3) of HMTA (under Sec. 405 of S. 1108); Judge Sofaer, for example, would probably so argue.

Others would no doubt argue, however, that this section of S. 1108 gives DOT new authority in the area of mode selection, "additional protective measures", determination of "relative hazard potential", and prenotification. We would argue that if DOT is going to make national policy decisions in these areas that are wise and that can withstand judicial scrutiny on the standards of the safety purposes of the HMTA, DOT needs no new Congressional authority to do so. We prefer, however, that at least for some years state and local governments (or regional compacts) be free to enact whatever protective regulations they consider necessary in these areas, for DOT's later consideration for national policy. S. 1108's current language (especially in Section 122) appears to encourage further preemptive forays by DOT into almost all the areas of concern in which state and local officials might exercise regulatory authority.

We are not entirely clear about the implications of the inclusion of hazardous materials vehicles (Sec. 304) in Title III of S. 1108, and especially in regard to the potential overlaps or conflicts between the HMTA's "purposes" and the purposes (Sec. 302 and 306) of Title III. One problem that we consider entirely relevant to our discussion of Title IV is that the proposed new federal annual vehicle inspection and corresponding federal fee system in Section 313 might prove a disincentive to current or future state inspection systems, Section 312 notwithstanding.

CONCLUSION

The environmental community can in general endorse wholeheartedly the positions that Colorado Governor Richard Lamm espoused at the Hazardous Materials Transportation Conference in Denver in September of 1982, where he said in part:

"The production of synthetic organic chemicals in the U.S. has increased from 10 pounds per capita in 1940 to over 2,000 pounds per capita today. This amounts to 500 billion pounds per year. There are approximately 70,000 chemicals in commercial use today, with perhaps 1,000 new chemicals produced each year.

Our success in controlling contaminants in the environment to date is not impressive. Since 1940 over 700 million tons of toxic wastes has been produced. It is estimated that 80 to 90 percent of these wastes, or 600 million tons, have been disposed of improperly. Toxic chemicals have been detected in materials ranging from mothers' milk to the polar ice caps.

The transportation of materials is but one cog in an incredibly complex industrial system. The entire use of chemicals by society must be examined in order to minimize the total risk. We must reexamine each and every component of the network. If after careful consideration, certain chemicals or wastes resulting from the development of certain products are deemed "too" dangerous—if the risk outweighs the benefits—then those materials should be eliminated. This is the philosophy behind the Toxic Substances Control Act of 1976 which the EPA has yet to implement fully.

Besides the overall increase in the use of chemicals in industry, there are other developments which have an impact on hazardous materials transportation. In recent year, many unsafe hazardous waste management facilities have been closed down. This has caused a great increase in the transportation of hazardous wastes, sometimes, as in the case of Colorado, wastes must be transported across several states for disposal.

The transportation of hazardous materials seems to be one of those problems that do not receive adequate attention until a disaster occurs—and then it is too late. With over 2,200 significant transportation spills occurring per year, with the quantity of materials being transported likely to increase, and with great pressure to reduce government spending, the time has come for an integrated federal, state, local and industrial hazardous materials transportation program.

The primary federal role should be to continue to regulate the technical areas including standards for container construction, labeling, placarding and shipping papers. Without basic national uniformity of regulations, interstate shipping would be a maze of red tape. Because the technology of hazardous materials is evolving so rapidly, it is critical that the federal regulations be kept current with the state-of-the-art in industry. At the same time the states need to continue to work with United States Department of Transportation (DOT) to assure that special state and local needs are recognized.

In general, the federal laws and regulations are sufficient. We in Colorado are not seeking a larger federal regulatory role. The chief outstanding issue in the federal regulatory program is that of preemption. There are clearly national interests which the federal government should and must protect. But at the same time, the federal program should be adaptable to the differing circumstances of the states and local governments. The federal system must also recognize the legitimate state responsibility to protect public health and welfare. State and local agencies are most knowledgeable in identifying the transportation routes which are safest—avoiding high hazard highways and densely populated areas.

Although federal laws and regulations are generally adequate, their enforcement is not. There are only five federal inspectors in the entire Rocky Mountain region. If enforcement is to be primarily a state responsibility, then state financial resources will have to be increased significantly. The states should explore the use of "user" fees to fund comprehensive regulatory programs for hazardous materials transportation, including enforcement activities."

The Environmental Policy Center will continue to work with states, localities, citizen groups, and other interested parties toward increased safety in hazardous materials transportation.

[The following information was subsequently received for the record:]

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question. In your testimony, you note the concern that the two federal grant programs in Title IV of S. 1108 may not be able to be funded at realistic levels, given the current fiscal climate. Assuming we could obtain the needed funding, would you support these programs?

Answer. The Center would support an adequately funded program of federal grants to the states, provided this was not used as a disincentive to responsible state and local programs.

Question. Please give a few examples of effective safety initiatives of State and local governments in the area of hazardous materials transportation. Do you see any of these actions as being in any way a burden to commerce?

Answer. See my testimony of July 13, pp. 83-85.

Senator DANFORTH. Thank you, sir.

Senator Exon?

Senator EXON. Mr. Chairman, I have no questions. I thank the members of the panel for their excellent testimony. It has been very helpful.

Senator DANFORTH. Gentlemen, thank you very much. You certainly have pointed out what has been for a long time the No. 1 controversy in this area, and that has to do with the relative responsibility of Federal Government and State and local governments.

And as I pointed out earlier, it was our view that this has been pretty much preempted by the Federal Government back in 1974, and therefore the remaining question is not whether or not the legal right of preemption exists, but whether in exercising its responsibility, with respect to routing especially, the Federal Government would give due consideration to the views of State and local governments. I take it that that would be your view of the aim of whatever the Federal Government is doing, that is to be sensitive and interested in State and local views on the matter?

Mr. MILLAR. Well, Senator, our view of the current HMTA is that it is a safety law and not a uniformity law, and that in fact that is what accounts for a lot of the interest in the current legislation about injecting some uniformity language into the bill as the legislative intent for the HMTA. We do not think those amendments are appropriate. We think the current bill has a nice blend of recognition of Federal preemption on the one hand and State and local responsibility on the other hand.

We think that States and localities are only now beginning to enact very good responsible legislation in various hazardous materials areas, and we do not think that it is appropriate to have what looks like an attempt to rewrite the congressional intent of the HMTA to include more uniformity kinds of language and also uniformity kinds of programs, like a national fee system that would, if not outright preempt State and local efforts, at least provide a disincentive for State and local efforts in that area.

Senator DANFORTH. Mr. McGough?

Mr. McGOUGH. I would concur. I would think that certainly in this whole area the city of New York by itself could not possibly adequately, or even perhaps appropriately in the national viewpoint, regulate the massive amount of transportation that flows through the city of New York for places beyond.

I think that there is a need for some uniformity in that regard. And so, in direct answer to your question, yes, I think that regional consideration of local views is something that is a desirable goal. There is inclusion in your amendments of that perspective, and I applaud that. I think it should be made mandatory, as pointed out by your earlier panel, and not discretionary on the Secretary's part. I would suggest that the EPA has tried a negotiation rulemaking, rather than a purely traditional formal rulemaking, and that might be a mode that might be tried in this regard.

The city of New York, as was cited in an earlier panel, passed regulations to control routings recently, and there was some concern expressed that that put a burden on other communities. We do not wish to do that, but in an area where there is a vacuum we have to do what we think is best for our citizens, and we would look forward to being able to sit down on a regional basis to address these problems and not have what we have at the Connecticut border now, with a bridge where we have a standoff between States over the routing of trucks.

I think doing what is best for our citizens is just a function of government, and certainly I know in the city and in the State such conflict is a deplorable situation, which we try to ameliorate as quickly as possible.

Senator DANFORTH. Gentlemen, thank you both very much.

That concludes the hearing.

[Whereupon, at 12 noon, the committee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF SALLY A. KIRKPATRICK, GOVERNMENT AFFAIRS REPRESENTATIVE, ALLIANCE OF AMERICAN INSURERS

The alliance of American Insurers is a major national trade association representing over 160 companies that write property and casualty insurance in all 50 states and the District of Columbia. The Alliance welcomes this opportunity to present our comments in support of Title II of S. 1108, the "Drunk and Drugged Driving Prevention Act of 1983." Our member companies are vitally interested in the area of highway safety and we commend the Subcommittee for focusing attention on this major national problem.

The problem of the drinking driver affects the American way of life in a devastating number of ways. Alcohol abuse has become America's No. 1 drug problem, adversely affecting both society and business. Over the years societal concern has tended to focus on the adverse impact on health and safety from uncontrolled alcohol abuse and alcoholism. Increased attention, however, is currently being focused on the drinking driver and the resulting loss of both life and resources.

Statistics reporting socio-economic loss due to drunk driving are staggering and estimates vary widely among sources. The Subcommittee has heard testimony, both today and in previous hearings, on the drunk driving issue that places the enormity of the problem in perspective.

Alcohol is a factor in at least half of the fatal motor vehicle accidents each year. Therefore, alcohol was implicated in half of the 52,600 fatalities in 1980—26,300 motor vehicle fatalities can be attributed to alcohol.

The National Safety Council estimates that at a cost of $170,000 per fatality, the socio-economic loss due to alcohol-related motor vehicle fatalities is $4.47 billion.

The National Council of Alcoholism estimates alcohol costs $1 billion in motor vehicle accidents each year.

The federal government estimates that $5 billion is spent each year for costs of alcohol-related motor vehicle fatalities. These costs, which include medical costs, property damages, etc., amount to $90 for every American family of four.

The National Safety Council estimates the cost of all motor vehicle accidents is $39.3 billion in wage loss, medical expense, insurance administration costs and property damage. This figure does not include indirect losses to employers of off-the-job accidents to employees, the value of cargo losses in commercial vehicles and damages awarded by the courts in excess of direct loss. If the 50 percent rate for fatilities involving the drinking driver were applied to all accidents, drunk driving costs could be as high as $17 billion, a figure often cited by Illinois Secretary of State Jim Edgar.

Using the standard .10 blood alcohol content (BAC), it has been estimated that one out of every 50 cars coming at us on the road is "piloted" by a drunk driver. On Friday and Saturday nights, that rises to one car in ten.

The statistics easily illustrate the magnitude and complexity of the problem. What is not so easy to find, however, is a solution.

Over the years, the Alliance has taken a number of actions to support highway safety programs and combat alcohol abuse. The Alliance, and other insurance interests provide support for the Insurance Institute for Highway Safety (IIHS), an independent organization devoted to research in the field of highway loss reduction. The IIHS has been involved in a number of research programs concerning alcohol use and abuse, and recently published an important new book by H. Lawrence Ross, a leading researcher in this field, titled *"Deterring the Drinking Driver: Legal Policy and Social Control."*

The Alliance also supports the National Committee on Uniform Traffic Laws and Ordinances (NCUTLO) which has been actively involved and concerned with problems of alcohol abuse on our nation's highways. The National Committee is the custodian of the Uniform Vehicle Code, a model act extensively used by the states to develop legislation applicable to the rules of the road. The Committee is composed of government—both state and federal—officials and public representatives, including traffic engineers, highway safety officials, insurance experts and many others.

The Alliance and its member companies have publicized the alcohol problem, have conducted rehabilitation programs for employees, and have done extensive research in the area aimed at reducing the number of alcohol-related deaths.

Finally, the Alliance has publicized the problem in the *Journal of American Insurance,* a publication we distribute both inside and outside the insurance industry. Numerous articles on drunk driving include the following: *"Drinking and Walking: Can You Do Both At the Same Time"* (Fall, 1981); *"Teenagers Talk About Marijuana and Driving"* (Summer, 1981); *"Raising The Legal Drinking Age Is A Sobering Experience"* (Spring, 1981); *"A Drinking-Driving Test For Teenagers"* (Spring, 1980); *"Teens, Drugs and Alcohol—On The Road Again"* (Fall, 1978).

The Alliance believes Title II of S. 1108, is a critical first step toward finding a solution to one of the key elements in the drunk driving problem—that of restricting the availability of alcohol to young drivers under 21 years of age, and by providing grants to those states which implement accident-reduction projects through use of computerized safety recordkeeping systems designed to produce data regarding accident incidents or potential sites for accident incidents.

During the past several years, numerous bills have been introduced, hearings held, and testimony presented on the drunk driving problem at both the federal and state level. The Alliance is pleased to have participated in many of these forums, and firmly believes that the development and maintenance of good state recordkeeping programs for drunk driving are a priority. We believe this will have two important deterrent effects on drunk drivers.

First, accurate motor vehicle records will enable the courts and motor vehicle departments to determine accurately a driver's past record and to use that information when imposing penalties or suspensions. Drunk driving arrests or charges would not be masked as "reckless driving" or other less serious offenses. Second, insurers would be able to use drunk driving information in underwriting to set rates and premiums that reflect the consequences of such a driver's poor driving performance.

During the Subcommittee's March 3, 1982, deliberations on drunk driving and the National Driver Register, the Alliance cautioned the Subcommittee that until state motor vehicle recordkeeping was upgraded a national driver register would be of limited usefulness.

The Alliance is pleased to endorse Section 206, of Title II of S. 1108, which would provide incentive grants to states to encourage states to upgrade and/or establish computerized safety recordkeeping systems. We believe this incentive to be a necessary step to establishing a strong, viable national driver register and ultimately to reducing the slaughter on our highways.

The Alliance also supports increasing the minimum drinking age from 18, with a goal of increasing it to 21. Young drivers have a higher accident rate than any other age group—and alcohol makes the problem worse.

For example, under-20 drivers made up only 8.9 percent of the driving population, yet were involved in over 18 percent of all traffic accidents and over 18 percent of all such accidents involving a fatality, according to a study by the National Highway Traffic Safety Administration (NHTSA).

In the 18- and 19-year-old age groups, 42 persons in every 100,000 have been involved in an auto accident where alcohol was a factor. For the driving population as a whole, the ratio was 28 per 100,000 population, according to Department of Transportation (DOT) statistics.

Studies affirm that a legal minimum drinking age of 21 is an effective countermeasure against alcohol-related accidents by young drivers. The ease with which alcoholic beverages can be obtained, and its visibility in the social environment, affect the amount and pattern of alcohol consumption and therefore the incidence of alcohol-related health problems. With a higher legal drinking age, young persons have more difficulty getting alcohol, so they have less, consume less, do less driving under its influence, and are therefore involved in fewer alcohol-related motor vehicle accidents.

The Alliance appreciates this opportunity to present our views on this important national problem. The Alliance has been supportive of highway safety programs and efforts to combat alcohol abuse over the years and we believe Title II of S. 1108 to be critical of these efforts.

STATEMENT OF GREYHOUND LINES, INC.

Mr. Chairman and Members of the Subcommittee, my name is William L. McCracken. I am Senior Vice President and Admistrative Assistant to the Chairman of the Board of Greyhound Lines, Inc.

I am submitting in this statement the views of Greyhound Lines, Inc., which is the largest regular route, intercity bus carrier in the United States. Greyhound Lines, Inc., would like to commend Senator Danforth, Chairman of the Subcommittee, Senators Pell and Packwood and all Members of the U.S. Senate Committee on Commerce, Science and Transportation for their concern for high safety expressed in S. 1108.

Greyhound's safety philosophy is that the safety of our customers, employees and highway users, is of the highest priority and, therefore, safety will be the first consideration in the development of all practices, procedures and programs governing the company's business.

Greyhound is grateful for the opportunity to comment on S. 1108.

TITLE II—DRUNK AND DRUGGED DRIVING PREVENTION ACT 1983, SECTION 206 COMPUTERIZATION OF TRAFFIC RECORD SYSTEMS

Our interest in this section results from the activities and success of MADD and promotes the expansion of the NDR for recordkeeping.

While there is no argument that the NDR is a good idea, it is geared for attacking one small segment of the problem. The lack of a charge for States to coordinate their information with other States will not provide improvement in the major problem area, identifying the development of problem drivers.

We suggest that the NDR concept be expanded using the time tested process established in 1958 when the Drivers License Compact was created by the Beamer Resolution (Public Law 85-684).

The Compact provides for: First, one license concept, second, one record concept, and third, insure uniform and predictable treatment of drivers, regardless of State of residence.

While there are 30 States currently members of the Compact, the lack of attention given to the Compact by some of the member States, as well as the expansion of the Compact can only be rectified, in my opinion, by Federal involvement.

TITLE III—MOTOR CARRIER SAFETY ACT OF 1983

Expansion of Federal safety jurisdiction

Greyhound Lines, Inc., supports the expansion of Federal safety jurisdiction over the interstate transportation of buses owned and operated by local school districts, as well as private transportation performed in vehicles designed to transport more than ten passengers. S. 1108 would make most intrastate bus operators, including local transit authority, subject to Federal safety regulation.

Bus inspections

Greyhound Lines, Inc., desires that our buses, bearing a valid inspection sticker, be recognized by all other jurisdictions, including Canadian provinces. Buses used in providing service to strictly intrastate passengers—commuter operations—would not be involved.

Each and every time a Greyhound bus completes scheduled service, or charter service, our buses are serviced. This can and does occur on a daily basis.

The annual inspection implies the random inspections by the Bureau of Motor Carrier Safety and the various States are not effective. Greyhound Lines, Inc., welcomes the inspection of vehicles by Federal and State agencies, anywhere, anytime, roadside, arriving and departing buses at our terminals and maintenance centers. But uniformity such as that of the Commercial Vehicle Safety Alliance is necessary. Once inspection standards are determined, these standards must be consistent, New York to California.

Certification of safety fitness

Greyhound Lines, Inc., favors this section of the bill, but recommends the guidelines for carrier fitness established in the Bus Regulatory Reform Act of 1982 be included in S. 1108. Section 314 of S. 1108 should be made retroactive to November 19, 1982, the effective date of the Bus Act.

Greyhound Lines, Inc., also favors the continuing juridiction of the interstate bus industry by the United States Department of Transportation, Bureau of Motor Carrier Safety. The Occupational Safety and Health Administration in conjunction with the U.S. Department of Transportation, but not separate from, can make recommendations to the Secretary, but the jurisdiction of the industry should remain with the U.S. Department of Transportation.

In summary, Greyhound Lines, Inc., appreciates and supports the efforts of this Committee to improve motor carrier safety. If we can be of any assistance to the Committee, we would be most happy to do so.

STATEMENT OF MILTON LAUGHLAND, SECRETARY, VIRGINIA VAN POOL ASSOCIATION

The Virginia Van Pool Association, Inc., (VVPA), is a non profit organization of van pool owners, operators and other interested parties pursuing activities which support, promote and assist van pooling as an alternative for commuter transportation. Established in 1979, VVPA represents largest group of independent van pool operators in the U.S. and is a recipient of the President's Energy Efficiency Award.

(The Maryland Van Pool Association, Inc., (MVPA), whose goals parallel that of VVPA's, have reviewed a draft of this letter and support the testimony contained herein.)

The intent of Senate Bill S. 1108, is to provide for additional highway and motor vehicle regulations and enforcement so as to improve the safety of U.S. highways, VVPA and MVPA commends this effort to increase the level of safety for highway users. Though this bill intends to increase regulations for commercial carriers such as buses, trucks and vehicles carrying hazardous material, we believe that another class of vehicle, the van pooling van, will be unintentionally and needlessly included unless an appropriate revision is made.

Under Title III, Definitions, part (2), sub (B), lines 5 and 6, the act will regulate commercial vehicles carrying 10 passengers or more. This number is significant because the generally accepted legal definition of a van pool is a vehicle having the capacity to carry 9 to 15 passengers include the Driver. Therefore, van pool vehicles commuting interstate would be within the scope of this bill.

The vans being used for van pooling generally have a gross weight of 7,200 pounds or less and are more related to the automobile than to commercial buses or trucks of 10,000 pounds gross weight or more. Vans are presently safer vehicles because of motor vehicle laws which have regulated their manufacture in the past. For example, manufactured van pool vehicles are equipped with seat belts for every passenger whereas commercial buses are not. Shock absorbing steering wheels and bumpers, impact absorption interior and exterior designs, and other safety requirements are also manufactured into vans. In addition, van pool drivers and their vans are on the highways for only a few hours a day, whereas, bus and truck drivers and their vehicles spend longer hours on the road.

Regulating van pool under this act will drain valuable resources away from the inspection of vehicles the act is intended to regulate.

Therefore, VVPA and MVPA respectfully request that Title III, under definition of commercial motor vehicles (2), sub (B), line 6, be revised from 10 passengers to 16 passengers so as to exclude van pool vehicles.

STATEMENT OF THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

The National Association of Independent Insurers, the nation's largest property/casualty insurance trade association composed of more than 500 insurance companies which provide nearly one-half of the automobile insurance coverage written in the country, is pleased to submit this statement in support of Sen. Danforth's bill S. 1108, "The Highway Safety Act of 1983." This comprehensive legislation will significantly advance the cause of highway safety. In particular, the mandatory air bag requirement for new cars will have a tremendous impact in saving lives and reducing the number and seriousness of injuries resulting from car crashes, and the 5 mph bumper standard will save consumers and insurers losses due to the consequences of low speed collisions.

NAII witnesses appeared at earlier subcommittee hearings to discuss these issues, and they gave detailed statements supporting automatic crash protection and improved bumpers, so we will not reiterate all of those comments.

We do want to state our general support for this legislation, which was an outgrowth of these hearings on highway safety, and update our earlier statements.

AUTOMATIC CRASH PROTECTION

NAII strongly supports introduction of life-saving air bag technology into the vehicle fleet as soon as possible.

Recently, the National Highway Traffic Safety Administration issued a report indicating that, if the current fatality rate trend remains unchanged for the next several years, the death rate on our nation's highways could reach 60,000 per year by the next decade. The report explained that this situation "could occur largely as a result of a preponderance of lighter passenger cars and light duty trucks in the national fleet, increased numbers of licensed drivers and registered vehicles, and an increase in the number of miles travelled per driver." ("Planning for Safety Priorities: 1983 Safety Priorities Plan")

In another recent NHTSA publication, the agency put a $57.2 billion price tag on the annual economic loss to society resulting from motor vehicle accidents. The costs to the federal government alone are estimated to be $7.5 billion in revenue and expenditures. ("The Economic Cost to Society of Motor Vehicle Accidents")

Sadly, NHTSA's "priorities plan" makes only brief mention of automatic crash protection devices. As these hearings have documented, air bags and passive seat belts could significantly reduce fatalities and the number and seriousness of injuries resulting from highway accidents. Yet NHTSA has announced that its only plans in this area are to commence two demonstration programs to answer questions concerning "feasibility, reliability and acceptability" which the agency feels are unresolved.

In our view, air bags and automatic belts were proven to be feasible, reliable and acceptable years ago. Your hearings have provided abundant evidence of this fact. Thus, it is disheartening that the agency is not doing more to promote the introduction of such life-saving and injury-reducing automatic crash protection devices into the vehicle fleet, especially in light of the shocking statistics referred to earlier. We hope that NHTSA will do more in the future to promote such safety devices under its new leadership.

Passage of S. 1108 will assure that new car buyers have passive occupant protection in the form of air cushion restraints to protect against death and injury in the event of a crash.

IMPROVED BUMPERS

NAII strongly supports reinstitution of the 5 mph bumper standard.

A recent report by the Highway Loss Data Institute (HLDI) on loss experience involving Subarus with 5 mph and 2.5 mph bumpers is added proof that NAII is correct in its prediction that weakening the federal bumper standard will result in bumpers far less effective than those which have recently been in use.

An analysis of insurance claims revealed that claims were 18–57 percent more frequent for cars with the weaker bumpers. Average loss payments per insured vehicle year for the cars with the weaker bumpers ranged form 29–31 percent larger. Thus "real-world" insurance data confirm what NAII predicted and the Insurance Institute for Highway Safety crash tests have established. The 2.5 mph bumper is much more vulnerable to expensive crash damage than a bumper produced under the 5 mph standard.

In our view, NHTSA had no basis to weaken the federal bumper standard, and it should be reinstituted. S. 1108 will assure that new car buyers will enjoy the benefits of 5 mph bumpers.

21 MINIMUM LEGAL DRINKING AGE—OTHER PROVISIONS

Other provisions of the bill address other aspects of highway and auto safety. We have chosen to concentrate on the air bag and bumper provisions because we feel they are the most important and have the potential for the biggest payoff in terms of benefits. However, we also support other provisions of this legislation which we feel will go a long way toward addressing the need for greater highway safety. For example, NAII commends the sponsors of S. 1108 for their support of a 21 minimum legal drinking age law at the state level by means of the special incentive grant program set forth in Section 205 of Title II.

Countless highway safety studies and tests have conclusively established that the teen years are the most treacherous ones on the highway, and the combination of alcohol and youthful, inexperienced drivers has led to a disproportionate involvement of teenage drivers in traffic accident fatalities. Other studies have convincingly demonstrated that states where the legal minimum drinking age has been raised experience a substantial reduction in nighttime fatal crashes. For these reasons, NAII strongly supports setting the minimum legal drinking age at 21. Although we wish it were not necessary for Congress to have to induce action by the states in raising their drinking age, the fact is, some states have not acted to do so even though the evidence overwhelmingly documents the highway safety benefits that would accrue. We therefore believe the incentive grant program contained in Title II is a proper and appropriate "inducement" to the states to consider changing their laws. While NAII and other special interest groups will continue to advocate a mimimum legal drinking age of 21 before state legislatures, we expect the battle will be easier if this program which offers subtle federal encouragement to change the law is adopted.

We share the concern of the Department of Transportation, however, that the minimum drinking age provision not be linked with the provision establishing criminal responsibility for sellers or servers of alcoholic beverages who sell or serve a person who is under 21 or who is intoxicated (or appears to be intoxicated). We suggest that this latter provision be dropped pending further study of the issue.

CONCLUSION

In conclusion, NAII is pleased to support Sen. Danforth's "Highway Safety Act of 1983," S. 1108, particularly those provisions which require air bags and 5 mph bumpers for new cars. With minor modifications, we think the bill will significantly advance the cause of highway safety if enacted.

We will be happy to work with you and your staff as you develop a final version of this legislation.

STATEMENT OF THE PETROLEUM EQUIPMENT SUPPLIERS ASSOCIATION

The Petroleum Equipment Suppliers Association (PESA) is a trade association made up of 341 companies that supply goods and services to the 20,000 or more companies that comprise the drilling and production segment of the petroleum industry. PESA counts among its members 14 companies that provide services which involve the use of radioactive sources. These 14 companies have almost 30,000 employees involved in these services across the United States. For the reasons set out below PESA supports Section 403(3) in Title IV of S. 1108.

First, we wish to say that S. 1108 and its Title IV, "Hazardous Materials Transportation Act Amendments of 1983" would bring much needed uniformity and rationalization to present state and local routing regulations. Increasingly, state and municipal governments are enacting routing restrictions and prohibitions and requirements for prenotification and escort. The rising tide of these regulations and ordinances threaten not only to burden interstate commerce involving the use of radioactive sources by (oil and gas well) service companies, but to actually destroy the ability of these companies to provide these services. Without these services the exploration and production of oil and gas in this country will effectively cease.

Specifically, several cities have already passed or are considering ordinances which completely prohibit or greatly impede the transportation of radioactive material through their city limits; several states have recently proposed advance notification requirements and individual shipment requirements. As you may know, most oil and gas well service operations utilize special form (encapsulated) radioactive material of less than 20 curies per source and less than 50 curies per truck (or "normal", non-special form material of less than 1 curie per truck). The well-site services involving the use of radioactive sources are absolutely essential to service the oil and gas industry. The services offered include downhole well logging, nondestructive pipe testing, fluid and cement density measurements and tracer studies of drilling and downhole circulation. When these services are needed at the oil or gas well-site, they are generally needed immediately. The service truck must reach the well-site by the fastest available route. If trucks are delayed there is a daily cost of from $3,000 to $7,000 which, in turn, makes any delay costly to the drilling operator.

We acknowledge the bill's hazardous material provisions for the following reasons:

1. Except for very small, millicurie range, amounts of radioactive isotopes used in tracer studies, radioactive sources used in oil and gas well services consist of "special form" Americium-241 and Cesium-137. Such "special form" sources have been certified by the DOT's Research and Special Programs Administration as meeting the International Atomic Energy Agency "special form" standards. This certification involves a testing of heating and immersion. This is not loose radioactive material, but rather material which is certified as resistant to dispersion into the envi-

ronment. In addition to "special form" standards, sources used in downhole well logging must be tested according to an American National Standards Institute specification N542 which simulates a well's downhole conditions or well fire conditions and is more stringent than "special form" standards.

2. In addition to being "special form", the sources are transported in sturdy shields. These shields are secured to the service vehicle thereby providing additional protection.

3. The oil and gas well service companies have an excellent record for safety in the handling, storage and transportation of radioactive materials. After 30 years of use in the oil and gas well service industry, we are aware of no incident in which a radioactive source or material has caused an injury. And we know of no incident in which any radioactive material has escaped into the environment in a transportation-related incident. In addition, drivers of well logging service trucks—costing in excess of $500,000—used to transport radioactive and other hazardous materials must be certified DOT drivers. To obtain this certification requires extensive classroom and behind-the-wheel training plus a thorough biennial physical examination. Follow-up improvement and defensive driving training also is standard practice for well logging service companies.

4. By the nature of the services involved, oil and gas well service vehicles must respond immediately to a drilling operator's order for logging services at the wellsite. Oil and gas well service companies must be able to service wells wherever they are located; any prenotification requirements or routing restrictions would seriously impede the exploration for oil and gas. With non-productive drilling costs of $3,000 to $7,000 per day as mentioned earlier, prenotification requirements would result in delays which would cause unnecessary financial burdens on drilling operators. Any prenotification requirements would be a needless burden because of the short lead time in requests for services and time for response. Similarly, routing restrictions which limit the use of highways, arteries, country roads and unimproved terrain would result in an adverse impact. Because of the multiplicity of possible destinations, any routing restrictions would be unmanageable with respect to oil and gas well service. Presently, oil and gas well services involving the use of radioactive materials already cost approximately $2 billion annually. Local prenotification and routing restriction restraints would result in substantial increases in that total cost. Such increased costs would be passed on to the American public in the form of higher costs for less energy.

As an example of the services using radioactive sources, downhole wells logging is an essential service for over 90% of the well drilled each year in the United States. Well-logging provides vital information concerning downhole formation characteristics, including the presence or absence of hydrocarbons. All except the shallowest well in this country are logged at least once, and many are logged several times during drilling operations.

This logging service involves the use of 20-curie Americium-241 sources and smaller Americium-241 and Cesium-137 sources and calibration devices, all in special form. These logging services must be provided promptly with very little advance notice, often only an hour or less. PESA member companies have approximately 378 logging stations across the United States. From these stations, logging trucks carrying radioactive sources are dispatched over 45,000 times per year. The average round trip distance per logging truck is approximately 117 miles per trip. Any advance notice or routing restriction requirements would seriously inhibit the ability of wireline service companies to provide this essential service to the drilling industry.

For these reasons, PESA supports Section 403(3) in Title IV of S. 1108 calling for the preemption by the Federal Government under the Hazardous Materials Transportation Act of State and local government regulations of the transportation of hazardous materials.

STATEMENT OF ROY M. COUGHLIN, EXECUTIVE VICE PRESIDENT FOR PUBLIC AFFAIRS, NATIONAL ASSOCIATION OF VAN POOL OPERATORS (NAVPO)

My name is Roy M. Coughlin, and I serve as the Executive Vice President for Public Affairs for the National Association of Van Pool Operators, known as NAVPO. I am employed by the Southern New England Telephone Company in New Haven, Connecticut as the Staff Manager of Environmental Affairs. As such, I established the ridesharing program for the company, which included the first corporate vanpooling program in the state, and the second in the Bell System. I also serve as the chair of the Connecticut Governor's Ridesharing Task Force, and with

Mayor Tom Bradley of Los Angeles chairing, served as vice-chair of the President's National Task Force on Ridesharing from 1979 through 1981. I have been actively engaged in the promotion of ridesharing throughout the United States since 1973.

The National Association of Van Pool Operators, or NAVPO, was established as a nonprofit organization in August 1976 and incorporated in November 1976. Its headquarters office is in Knoxville, Tennessee, and it is staffed by a full time executive director, Mr. Edward Marks, and a part-time clerical person.

NAVPO's membership rose from 31 founders to about 500 currently, representing government at all levels, major corporations, individuals engaged in or interested in promoting ridesharing, and vendors offering ridesharing and ancillary services and products.

This testimony refers to Senate bill S. 1108 offered by Senators Danforth, Packwood and Pell, with specific reference to those sections which would, with or without intention to do so, reclassify vans used in ridesharing arrangements as commercial vehicles.

The intent of the bill is to enhance safety on the highways, a goal with which NAVPO fully concurs. It is, in fact, a source of pride for the members of NAVPO that the mode of commuting which they endorse, ridesharing (and particularly vanpooling) represents the safest mode of commutation travel now in use. Recently, NAVPO developed and offered its membership a vanpooling safety manual, the only such product available. Members of NAVPO, by their very affiliations and employment, place user safety in the highest priority. Users of these services are employees of member corporations and governmental units, and employee safety knows no higher priority.

The bill, as worded, would place vans carrying 12 and 15 passengers into the commercial designation. These vehicles are the ones most commonly used for vanpooling. It is our belief that the drafters of the bill created this potentially adverse effect without intending to do so. The bill as worded would effectively reverse the progress made during the past decade of ridesharing's growth in almost every state. The legislators, transportation officials, insurance carriers, sponsoring employers, and many other participants, have worked hard to avoid having vanpools considered as commercial vehicles for one major reason, borne out by early history of vanpooling. During the 1970's, employers and individuals alike attempting to implement vanpools were quoted insurance premiums as high as $3,000 per year per van. NAVPO interceded through conversations with the Insurance Services Office a service organization which serves the industry. The result was a clear statement of policy that vanpools would be classified as passenger vehicles, and would be recommended for a special rate structure fitting the classification and use of the vehicle. A clear distinction was also made between vans used for ridesharing arrangement and all others the uses of which might be more or less unacceptable as insurance risks.

It is interesting to note that a national survey, conducted by NAVPO, revealed that the safety record of vanpools was so good that there was insufficient claim experience with which the insurance industry could make its judgments easily. It has been a gratifying experience to NAVPO and to ridesharing proponents that the insurance industry has not only supported the low rates for vanpooling (and in fact NAVPO offers a group insurance plan for its members), but that many insurance companies, as employers, conduct highly successful ridesharing programs, featuring vanpooling.

The results to be expected if this bill is passed as worded include some which would be destructive of the vanpooling effort. Selling the concept of vanpooling to persons who have enjoyed driving alone for many years, is keyed to the truth that so doing will result in savings in commutation costs ranging from one-half to two-thirds of the cost of driving alone. The restoration of commercial rates to vanpools would eliminate or reduce these savings to the point where few, if any, persons would avail themselves of the arrangement. The result of this occurrence would be the potential return to the highways of the almost 250,000 automobiles which were removed by the 20,000 vans now operating as vanpools. The benefits of air pollution reduction, energy savings, traffic reduction, balanced public transportation, reductions in mass transit subsidies, and all the other benefits which have been realized, would be lost.

The vans used in socially oriented programs for the elderly and handicapped, if burdened with these higher insurance rates, could very likely be terminated or face unsupportable subsidies.

NAVPO recommends that vans be retained as currently classified—as passenger multipurpose vehicles. To accomplish this, a simple change in sections 104 and 304 of the bill is suggested, that of changing the number 10 to the number 15. This would properly classify vans, and would in no way jeopardize the objectives and intent of the bill with respect to vehicle safety.

To repeat NAVPO's principal arguments: the wording of the bill would effectively eliminate ten years of effort by hundreds of persons and organizational units, and as well as most of the states, to have vanpools considered as passenger, multipurpose vehicles. It would effectively destroy the marketability of the vanpooling concept, would damage a market for the automobile manufacturers, remove from service vans used in social programs for the elderly and handicapped, and restore all the disadvantages of 250,000 automobiles being operated daily for two commuting trips.

Attachments* include material substantiating points made in this presentation. NAVPO is grateful to the subcommittee for this opportunity to express its views, and wishes to be a continuing resource to it and to others with respect to ridesharing, vanpooling, and highway safety.

Thank you.

Statement for the Record on Behalf of the Electric Utility Companies' Nuclear Transportation Group, the Edison Electric Institute, the American Nuclear Energy Council

This statement on Title IV of S. 1108, "The Hazardous Materials Transportation Act Amendments of 1983" is submitted on behalf of the Electric Utility Companies' Nuclear Transportation Group (the "Group"),[1] the Edison Electric Institute ("EEI"), and the American Nuclear Energy Council ("ANEC"). The Group is composed of 34 utilities around the country that are operating, constructing, or in various stages of planning 93 nuclear power reactors. The Group is vitally interested in Federal, State, and local laws and regulations that might effect the ability of utilities to transport the fuel cycle materials essential to the safe, prudent, and economical operation of commercial nuclear power plants. EEI is the association of the nation's investor-owned electric utilities, whose members provide about 76 percent of the nation's electricity and serve over 73 million customers. ANEC represents more than 100 organizations having an interest in nuclear power, including private, public and cooperatively-owned utilities, manufacturers, architect-engineers, and various firms in the nuclear fuel cycle.

The purpose of this statement is twofold: First, to describe to the Committee the scope of the Department of Transportation's ("DOT") current authority under the Hazardous Materials Transportation Act ("HMTA") and the existing regulatory system promulgated by DOT pursuant thereto governing the transportation of radioactive materials, and to describe the Nuclear Regulatory Commission's ("NRC") jurisdiction over the transportation of radioactive materials pursuant to the Atomic Energy Act of 1954, and second, to provide specific comments concerning suggested modifications to Title IV of S. 1108 to ensure that any bill to amend the HMTA recommended by this Committee does not adversely affect the current regulatory environment and thereby have a deleterious impact on the safety of radioactive materials transport.

As will be explained in detail in our testimony, we believe that much of what Title IV of S. 1108 seeks to accomplish can presently be done by DOT pursuant to its existing authority under the HMTA. In the area of radioactive materials transport in particular, DOT, in conjunction with the NRC, has promulgated a comprehensive regulatory scheme that includes, among other things, routing regulations, a prenotification system, driver-training requirements, packaging design standards, and escort requirements. We suggest that in giving further consideration to this proposed bill, the Committee should ensure that any legislation and accompanying legislative history reflect the fact that there already is a comprehensive and effective

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* The attachments are in the Committee files.

[1] The current membership of the Group is as follows: Arizona Public Service Co., Baltimore Gas & Electric Co., Boston Edison Co., Carolina Power & Light Co., Commonwealth Edison Co., Consolidated Edison Co. of New York, Inc., The Detroit Edison Co., Duke Power Co., Florida Power & Light Co., Georgia Power Co., Gulf States Utilities Co., Houston Lighting & Power Co., Indiana & Michigan Electric Co., Kansas City Power & Light Co., Kansas Gas & Electric Co., Long Island Lighting Co., Nebraska Public Power District, Niagara Mohawk Power Corp., Northeast Utilities, Northern States Power Co., Pacific Gas & Electric Co., Pennsylvania Power & Light Co., Philadelphia Electric Co., Power Authority of the State of New York, Public Service Co. of Colorado, Public Service Co. of Indiana, Inc., Public Service Electric & Gas Co., Rochester Gas and Electric Corp., Southern California Edison Co., Union Electric Co., Virginia Electric & Power Co., Wisconsin Electric Power Co., Wisconsin Public Service Corp., and Yankee Atomic Electric Co., The Edison Electric Institute supports the group financially and participates in its activities.

Federal regulatory system governing the transportation of radioactive materials and that Congress does not intend that regulatory system to be affected by this bill.

THE CURRENT REGULATORY ENVIRONMENT

There is currently a comprehensive federal regulatory scheme governing the transportation of radioactive materials, which includes such issues as packaging standards, prenotification, routing, and driver training. This regulatory system has resulted in an exemplary safety record. Over 5,000 shipments of spent nuclear fuel have been made nationally over the last thirty years without the occurrence of a single accident resulting in any release of radioactive materials.

Radioactive materials are but one of the numerous hazardous materials subject to regulation by the DOT. Yet the transportation of radioactive materials is distinct from that of other regulated hazardous materials in several crucial regards. First, the transportation of radioactive materials is subject to broad and intensive regulation at the Federal level by both the DOT, pursuant to the HMTA, and the NRC, pursuant to the Atomic Energy Act of 1954. Second, the DOT has recently issued a comprehensive routing rule ("HM-164") governing the highway transportation of radioactive materials. Third, the Federal Emergency Management Agency ("FEMA") has, in the discharge of its responsibilities to coordinate Federal assistance to State and local governments, developed programs to assist State and local governments in the preparation of emergency response plans for transportation accidents involving radioactive materials.

DUAL TRANSPORTATION REGULATION BY THE DOT AND NRC

Section 105 of the HMTA gives DOT the authority to issue any regulations it deems necessary or appropriate to ensure the safe transportation in commerce of hazardous materials. Such regulations may govern any aspect of transportation deemed necessary or appropriate by the Secretary of DOT, expressly including such factors as packing, handling, labeling, marking, placarding, routing, and the marking, maintenance, and testing of a package or container to be used to transport certain hazardous materials. Section 112 of the HMTA provides that State and local requirements that are "inconsistent" with the HMTA or the DOT's hazardous materials regulations promulgated thereunder are preempted unless, upon application by an appropriate State agency, DOT determines that the inconsistent requirement provides an equal or greater level of protection to the public than the Federal requirement and does not unreasonably burden commerce.

The respective roles of the DOT and NRC in the regulation of the transportation of radioactive materials are set forth in a Memorandum of Understanding signed by the two agencies on June 8, 1979. In general, the DOT is responsible for issuing complete and comprehensive regulations governing the packaging and transportation of radioactive materials as part of its overall body of regulations for the packaging and transportation of all hazardous materials. The NRC is responsible for developing safety standards for the design and performance of packages for fissile and certain other types and quantities of radioactive materials, including spent fuel. Each agency has expressly adopted the regulations promulgated by the other to provide a comprehensive Federal regulatory framework.

In addition to developing design and performance standards for packages of fissile and certain types and quantities of radioactive materials, including spent nuclear fuel, NRC has also promulgated regulations pursuant to its authority under the Atomic Energy Act to ensure the physical protection of spent fuel in transit and the protection of safeguards information relating to the transportation of spent fuel and to provide for prenotification to State governors or their designees of shipments of spent fuel and nuclear waste.

The NRC's prenotification regulations are of particular importance to the Committee in its consideration of S. 1108 because Section 122(a)(1)(B) authorizes the Secretary of DOT to establish "a prenotification system which would inform State or local governments in advance of the timing, nature, and routing of hazardous materials shipments through the jurisdictions". In Section 301(a) of Public Law 96-295, the NRC Authorization and Appropriations Act of 1980, Congress directed the NRC to "promulgate regulations providing for timely notification to the governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State." Congress further provided that the NRC need not promulgate prenotification requirements for nuclear waste in such quantities and of such types as the NRC "specifically determines do not pose a potentially significant hazard to the health and safety of the public." Acting pursuant to this Congressional directive, the NRC promulgated two final regulations. The first requres prenotification of nuclear waste shipments [2] to State governors or their designees and the appropriate NRC Inspection and Enforcement Regional Office. 10 C.F.R. § 71.5a and 71.5b. The second regulation requires prenotification of spent fuel shipments [3] to State governors or their designees. 10 C.F.R. 73.37(f). Two separate regulations are necessary because information regarding spent fuel shipments contains sensitive safeguards data which must be protected, while information pertaining to other nuclear waste shipments is not sensitive. Thus, the NRC's prenotification regulations were carefully designed to comport with its safeguards responsibilities. If DOT were to issue conflicting prenotification regulations governing radioactive materials shipments, the safety of such shipments might be significantly decreased.

The DOT's highway routing rule for radioactive materials shipments

On January 19, 1981, DOT published in the Federal Register a final rule governing the highway routing of radioactive materials, designated HM-164. 46 Fed. Reg. 5298 (1981), codified at 49 C.F.R. § 177.825.[4] In general, HM-164 provides for the use of the Interstate highway system for shipments of highway route controlled quantity of radioactive materials on a nationwide basis, yet allows the States to provide alternatives to the use of the Interstate system within their borders based on unique local circumstances so long as they consult with affected States and localities to ensure consideration of all impacts and continuity of designated routes.

DOT concluded in the HM-164 rulemaking that "the public risks in transporting [radioactive] materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions on the highway mode of transportation," 46 Fed Reg. at 5299, and that Federal "routing requirements can improve safety—not only by providing for the use of the safest highway routes, but also by addressing the safety impacts of narrowly conceived local actions." Id. at 5300.

Specifically, HM-164 provides a national framework for the highway routing of radioactive materials within which State and local concerns can be addressed. HM-164 provides that a motor vehicle that contains radioactive materials for which placarding is required to be operated on highway routes that minimize radiological risk considering available information on accident rates, transit time, population density and activities, and time of day and day of week during which transportation will occur. 49 C.F.R. § 177.825(a). This requirement does not apply if there is only one practicable highway route available, considering operating necessity and safety, or if the motor vehicle is operated on a "preferred highway." Id. A motor vehicle containing a package of a highway route controlled quantity of radioactive material,[5] including spent fuel, must operate over a preferred route selected to reduce the time in transit and thereby minimize the overall risk to public health and safety and the environment. 49 C.F.R § 177.825(b). A preferred route consists of (1) an Interstate system highway or an Interstate system bypass or beltway around a city when available; or (2) an alternative preferred route designated by a State routing agency in consultation with affected localities and neighboring States and in accordance with DOT guidelines or an equivalent routing analysis which adequately considers overall risk to the public.

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[2] "Nuclear waste" is currently defined as any large quantity of source, byproduct, or special nuclear material required to be in Type B packaging while transported to, through, or across state boundaries to a disposal site, or to a collection point for transport to a dispoal site, or a large quantity of spent fuel, irrespective of destination, if the quantity is less than that subject to the advance notification requirement of 10 C.F.R. § 72.37(F).

[3] This regulation applies to spent fuel in quantities that in a single shipment both exceed 100 grams in net weight of spent fuel, exclusive of cladding or other structural or packaging material, and have a total radiation dose in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding.

[4] The validity of HM-164 was challenged by the City and State of New York in the United States District Court for the Southern District of New York. Judge Abraham D. Sofaer affirmed the validity of the HMTA and its preemption section and held that HM-164 was valid in every respect except insofar as it permits shipment of large-quantity radioactive materials through New York City. *City of New York* v. *Department of Transportation*, 539 F. Supp. 1237 (S.D.N.Y. 1982). For such shipments, HM-164 was deemed invalid because DOT failed to conduct a sufficient alternative analysis pursuant to the HMTA and the National Environmental Policy Act, 42 U.S.C. §§ 4321-4361 (1976 & Supp. IV 1980). An appeal of certain issues filed by the DOT and utility intervenors is currently pending at the United States Court of Appeals for the Second Circuit.

[5] By amendment of its regulations effective July 1, 1983 (Fed. Reg. 10218, March 10, 1983), the DOT substituted the term "highway route controlled quantity" for the term "large quantity." The DOT is of the view that transportation of irradiated reactor fuel is not affected by this change in terminology.

In addition to routing, HM-164 contains numerous other provisions designed to ensure the safe highway shipment of radioactive materials, including the need for written route plans and driver-training requirements.

Emergency response planning and preparedness

FEMA, which was created in 1978, is the agency primarily responsible for coordinating Federal assistance to State and local governments that are developing plans for responding to radiological accidents at both fixed nuclear facilities and at the scene of transportation accidents.

On March 11, 1982, FEMA published a final regulation, effective immediately, that assigns Federal agency responsibilities for assisting State and local governments in planning for emergency preparedness for peacetime nuclear emergencies, including transportation accidents involving radioactive materials. 47 Fed. Reg. 10758 (March 11, 1982). The regulation established the Federal Radiological Preparedness Coordinating Committee ("FRPCC") consisting of FEMA, which chairs the FRPCC, NRC, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, DOT, Department of Defense, Department of Agriculture, Department of Commerce and, where appropriate and on an ad hoc basis, other Federal departments and agencies. The FRPCC shall assist FEMA in providing policy direction for Federal assistance to State and local governments in their radiological emergency planning and preparedness activities.

The regulation also establishes 10 Regional Assistance Committees ("RACs") located throughout the country which consist of representatives from each of the federal agencies participating in the FRPCC. The RAC's will assist State and local government officials in the development of their radiological emergency plans and will review these plans and observe exercises to evaluate the adequacy of the plans.

The regulation sets forth in detail the interagency assignments pursuant to the FRPCC and RAC's. FEMA, DOT, and NRC are specifically responsible for coordinating the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency plans. As part of this program, FEMA has recently issued guidelines to Federal agencies to assist them in preparing their programs for responding to radiological emergencies, including transportation, and to States and localities to assist them in preparing programs for responding to transportation accidents. 48 Fed. Reg. 19229 and 20635 (1983). DOT is also directed to provide guidance and materials for use in training emergency service personnel and other response personnel for transportation accidents involving radioactive materials and to participate in interagency planning for such training.

Notwithstanding the overall responsibility of FEMA for coordinating Federal assistance to State and local governments in emergency response planning, DOT and DOE have also independently developed programs dealing with emergency preparedness.[6] DOT has prepared, in coordination with emergency service personnel and State and local officials, a comprehensive training program for responding to radioactive material transportation accidents that is available on request to State governments. Handling Radioactive Material Transportation Emergencies, U.S. Department of Transportation, Research and Special Programs Administration, Materials Transportation Bureau, DOT/RSPA/MTB-7917, July 1979. The DOT has also completed a booklet entitled "Response to Radioactive Material Transportation—Information Incident Guidance" that will be provided to State radiation control program directors and emergency management authorities on request. It is intended to provide local emergency response personnel with basic information on the first steps to take at the scene of an accident until the arrival of State or other radiological response teams.

COMMENTS ON SPECIFIC PORTIONS OF S. 1108

Purposes of S. 1108

We agree with the objectives of S. 1108 to promote public health and safety by providing for increased coordination among the various levels of government and greater consistency among Federal, State and local rules and regulations. Many of the same personnel in State and local governments are responsible for responding to accidents involving any type of hazardous materials, including radioactive materials, and it is important that available resources for assisting States and localities in this regard be allocated prudently. Shipments of radioactive materials, however, are often subjected to State and local restrictions and requirements notwithstanding the excellent transportation safety record of these materials and without regard to their relative risk.

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[6] Attachment 1 is a brief description of Federal programs currently in place to ensure effective emergency response capability for transportation accidents involving radioactive materials.

Accordingly, we agree with the thrust of this bill, which is to address in a comprehensive way the potential problems associated with the tranportation of all hazardous materials. However, we do not believe that the proposed legislation is necessary to accomplish those ends. As described in the first section of this statement, DOT currently has the authority, pursuant to Section 105 of the HMTA, to issue any regulations it deems necessary and appropriate to ensure the safe transport in commerce of hazardous materials, including routing and prenotification regulations. In addition, pursuant to Section 112 of the HMTA, State and local hazardous materials transport requirements that are inconsistent with the HMTA and regulations issued thereunder by DOT are preempted; however, DOT may exempt an inconsistent State or local requirement from the preemptive effect of the HMTA if it determines that the requirement affords an equal or greater level of protection to the public than the federal law and does not unreasonably burden commerce. Thus, the appropriate division of responsibility between the DOT and the States and localities is expressly set forth in the HMTA. Nevertheless, recognizing the Committee may desire to recommend legislation that will strengthen the present regulatory scheme, we hereby submit the following comments on S. 1108.

DIVISION OF RESPONSIBILITY AMONG FEDERAL AGENCIES

As regards the appropriate division of responsibility among the various Federal agencies for regulating the transportation of the radioactive materials, we believe that the Memorandum of Understanding signed by the DOT and NRC is a comprehensive and workable arrangement that appropriately reflects Congressional intent. Any amendments to the HMTA should not upset this balance of regulatory authority. Similarly, we believe that the determination of lead responsibility at the Federal level for emergency prepardeness and response activities involving the transportation of hazardous materials should be established in the Memorandum of Understanding between the involved Federal agencies.

DIVISION OF RESPONSIBILITY AMONG DOT AND STATES/LOCALITIES

We strongly believe that uniformity in Federal, State and local hazardous materials transportation regulations is crucial to ensuring safe transport. We believe that section 112 of the HMTA, as currently enacted, provides States and localities sufficient opportunity to petition DOT to take account of unique local circumstances affecting the safety of hazardous materials transport by exempting from preemption an inconsistent State or local requirement that achieves an equal or greater degree of safety associated with transporting a hazardous material and that does not unreasonably burden commerce.

Accordingly, we believe that this bill should encourage States and localities to adopt DOT transport regulations in areas where nationwide uniformity in regulation is essential to ensure safe transport and local conditions have little, if any, effect on the need for regulation. Included in this category are, among others, regulations governing classification and definition of hazardous materials, equipment and packaging specifications, requirements for written accident reporting, qualifications and training standards for vehicle operators, and hazard communication requirements such as placards, labels and shipping papers. On the other hand, where transport regulations may need to be modified to account for unique local conditions affecting transportation safety, such as highway routing, we believe that DOT should use the regulatory concept set forth in HM-164 by providing a Federal regulatory framework within which State and local concerns can be addressed. In other words, in these areas, DOT should issue comprehensive regulations that ensure an adequate level of public safety in nationwide transport. States and localities can then adopt these regulations with the knowledge that they will adequately protect the health and safety of their citizens. However, DOT should specify the way in which States and localities may implement the Federal regulations within their jurisdictions if they desire to account for unique local transportation conditions without unreasonably burdening commerce.

Routing and prenotification

We believe that Section 122 of S.1108, "Routing and Prenotification", is unnecessary in view of the provisions of section 105 of the HMTA. As noted previously, pursuant to this broad grant of rulemaking authority, DOT has issued a highway routing rule for radioactive materials and has the authority to issue a similar routing rule for any other hazardous materials if it determines that such a rule is necessary or appropriate.

With regard to prenotification, the NRC has established a workable and effective prenotification system for shipments of spent nuclear fuel and certain types of nuclear waste. Although the authority to issue prenotification regulations clearly falls within DOT's current regulatory authority pursuant to section 105 of the HMTA, if DOT were to also promulgate prenotification regulations for shipments of radioactive materials, pursuant to the Memorandum of Understanding such regulations must be consistent with those of the NRC.

In addition, we think the Committee should recognize that although DOT currently has the authority to issue prenotification regulations for all hazardous materials under the HMTA, such regulations may not be justified from a public safety viewpoint. In fact, Howard Dugoff, Administrator of the Research and Special Programs Administration at the DOT testified at the July 13, 1983 hearings on S.1108 that it is far from clear that any form of local, State, or Federally mandated prenotification scheme will result in an improvement in the effectiveness of local enforcement and emergency preparedness activities. To the contrary, Mr. Dugoff noted that "the logistical problems involved in implementing such a system would be immense, and preliminary analysis indicates that the cost of implementation, both to industry and state and local governments, would outweigh the potential benefits to emergency response programs." It has never been established what States or localities would do, or do differently, if they were to be notified in advance of shipments of hazardous materials. There is no evidence that prenotification would improve emergency response capability or justify the significant costs and potential delay associated with a comprehensive prenotification scheme.

Section 122(a)(2) provides that prenotification and routing regulations issued by the Secretary must provide for the participation of State, local, and regional governments in selecting preferred routes and modes of transportation of hazardous materials within their respective jurisdictions. Section 122(a)(3) requires the Secretary to consider, in determining whether to promulgate such regulations, whether any mode represents an unacceptable level of risk to safety with respect to the transportation of hazardous materials. The HMTA currently does not require DOT to make intermodal choices in issuing transportation regulations of nationwide applicability, primarily because it is not possible to do so in a general rulemaking proceeding. The relative safety of the various modes of transportation for the transport of a specific hazardous commodity within a given jurisdiction requires a site-specific analysis. It is for this very reason that Section 112(b) of the HMTA authorizes DOT to exempt a specific State or local requirement from preemption. In addition, the HMTA currently requires DOT to prohibit the use of a particular mode if, through regulating the use of that mode, it cannot ensure an adequate level of public safety. It would not only impose a significant regulatory burden on DOT to require it to make modal choices for every particular State or locality in a nationwide rulemaking proceeding, but it also would be difficult, if not impossible, for DOT to do so. We believe that the factors listed in Sections 122(a) and (b) should not be considered by DOT in a general rulemaking proceeding, but rather should be considered by DOT in determining whether a nonpreemption ruling is appropriate for a specific State or local requirement.

Uniformity of Federal/State/local regulation—emergency response planning and preparedness

Finally, we recommend that emergency response planning grants or new training programs concerning emergency response preparedness be predicated on a joint assessment, to be conducted by the responsible Federal agencies, of the current coordination between Federal, State, and local agencies in preparing for hazardous materials transportation emergencies and the existing training programs at the Federal, State, and local level designed to increase such emergency response preparedness.

If that assessment indicates that additional training is necessary to ensure that State and local emergency response personnel are adequately prepared to respond to hazardous materials transportation accidents under Federal guidelines, we believe strongly that funding for such planning grants should be expedited through Congressional action.

Thank you for the opportunity to submit this testimony on Title IV of S. 1108. We would be glad to provide you with any additional information that you may find helpful in your consideration of this bill.

ATTACHMENT 1

PLANNING AND RESPONSE FOR RADIOACTIVE MATERIAL TRANSPORTATION EMERGENCIES

While the safety record of the nuclear transportation industry has been outstanding over the past 30 years, there is still a need to ensure the development of adequate emergency response programs for transportation related incidents. This need for coordinated emergency response preparedness among Federal, State and local government entities, and private industry, in the event of a radioactive material transportation accident has been recognized in several ways. There follows a brief description of existing program to ensure adequate and efficient emergency response.

The Federal Emergency Management Agency ("FEMA")

FEMA, which was created in 1978, is the agency primarily responsible for coordinating Federal assistance to State and local governments and that are developing plans for responding to radiological accidents at both fixed nuclear facilities and at the scene of transportation accidents.

On March 11, 1982, FEMA published a final regulation,[1] effective immediately, that assigns Federal agency responsibilities for assisting State and local government in emergency planning and preparedness for peacetime nuclear emergencies, including transportation accidents involving radioactive materials. The regulation established the Federal Radiological Preparedness Coordinating Committee ("FRPCC"), consisting of FEMA, which chairs the FRPCC, the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Transportation, Department of Defense, Department of Agriculture, Department of Commerce and, where appropriate and on an ad hoc basis, other Federal Departments and agencies. The FRPCC shall assist FEMA in providing policy direction for Federal assistance programs to State and local governments in their radiological emergency planning and preparedness activities.

The regulation also establishes 10 Regional Assistance Committees ("RACs") located throughout the country which consist of representatives from each of the federal agencies participating in the FRPCC. The RACs will assist State and local government officials in the development of their radiological emergency plans and will review these plans and observe exercises to evaluate adequacy of the plans.

The regulation sets forth in detail the interagency assignments pursuant to the FRPCC and RACs. FEMA, DOT, and NRC are to work together to prepare and promulgate guideance to State and local governments for their use in developing the transportation portions of radiological emergency plans. DOT is also directed to provide guidance and materials for use in training of emergency services and other response personnel for transportation accidents involving radioactive materials and to participate in interagency planning for such training.

Notwithstanding the overall responsibility of FEMA for coordinating Federal assistance to State and local governments, a number of federal agencies have independently developed programs dealing with emergency response.

The U.S. Department of Transportation ("DOT")

The DOT has developed and distributed to each State a self-contained, pre-packaged training program for responding to radioactive material transportation accidents.[2] The comprehensive training package, which consists of slides, tapes, student workbooks and instructor guides, is a simple and straightforward instruction kit designed to provide "first-on-the-scene" emergency service personnel, such as local fire, police and ambulance organizations, with a basic understanding of the subjects of radiation and associated hazards, packaging required for nuclear material, transportation regulations, protective measures and procedures, and planning and preparedness for transportation accidents. DOT coordinated the development of this training program with emergency service personnel as well as State and local officials.

A booklet entitled "Response to Radioactive Material Transportation Information and Incident Guidance." [3] has also been prepared and is being distributed to State radiation control program directors and emergency management authorities on request. The publication was designed to serve as an informational source providing background and guidance for first-on-the-scene responders at transportation accidents involving radioactive materials. Its primary aim is to prevent sufficient information regarding procedures to be followed until expert assistance can be obtained.

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[1] 47 Fed. Reg. 10758 (March 11, 1982).

[2] Handling Radioactive Material Transportation Emergencies, U.S. Department of Transportation, Research and Special Programs Administration, Materials Transportation Bureau, DOT/RSPA/MTB—7917, July 1979.

[3] Radioactive Materials Transportation Information and Incident Guidance, U.S. Department of Transportation, Research and Special Programs Administration, Materials Transportation Bureau, DOT/RSPA/MTB-81/4.

The U.S. Department of Energy ("DOE")

DOE has the responsibility to coordinate and respond as needed to any type of accident or emergency involving any type of nuclear material anywhere in the country. To carry out this responsibility, DOE has established 8 Regional Coordinating Offices for radiological assistance, with corresponding geographical areas of responsibility. The resources and response capability of each coordinating office is generally dependent only on the nature of the emergency; typically, a team can be mobilized within two hours of notification and arrive at the scene, anywhere in the United States, within a maximum of 6–8 hours.

There are many types of DOE response groups available. Each is described below along with its primary areas of responsibility and expertise. The Radiological Assistance Program is designed to respond to a request for assistance from any State, and may draw on any of the following groups.

A. DOE RADIOLOGICAL ASSISTANCE TEAMS

The DOE has 28 Radiological Assistance Teams which are trained to respond to any type of emergency involving radioactive materials. The number and type of personnel and equipment which would respond would be dependent upon the nature and type of emergency. A team could consist of from two people with radiological monitoring equipment up to forty or more people, representing a variety of disciplines, with a vast array of highly sophisticated instrumentation. The teams may draw on personnel from a variety of disciplines.

The teams are supported by the Military Airlift Command which provides C–141 transport planes. The teams are also authorized to charter any type of aircraft if necessary. Also available to the teams for use in more serious emergencies are three self-contained communications and monitoring pods. These pods are easily loaded onto any wide-body jet or C–141. All of the DOE teams are on two-hour alert status.

B. ACCIDENT RESPONSE GROUP—ARG

This group, which is coordinated by DOE-Albuquerque, is primarily geared to respond to nuclear weapons accidents. It is composed mostly of DOE contractor personnel from the major national laboratories, and EG&G and Pantex, two large DOE contractors. Over 400 people are available through this program.

C. NUCLEAR EMERGENCY SEARCH TEAM—NEST

The NEST group is managed by DOE Nevada Operations and centered at Las Vegas, Nevada and Andrews Air Force Base in Washington, D.C. NEST has its own search and measurement aircraft, motor vehicles and sophisticated equipment. Recently, NEST has received much publicity in connection with the Russian satellite, COSMOS 1402, which fell from orbit and re-entered the earth's atmosphere. NEST was geared to respond if a portion of that satellite had landed anywhere in the free-world. Primarily geared to respond to situations involving theft of nuclear-materials or terrorist activites, it too is available to respond to any situation as needed. When not responding to emergeicies, the personnel and equipment which comprise NEST conduct routine radiological surveys of private and government-owned nuclear facilities throughout the country.

D. DEPARTMENT OF DEFENSE NUCLEAR ACCIDENT RESPONSE TEAMS

There are over four hundred auxillary DOD response teams around the world. These teams are geared to respond primarily to nuclear weapons accidents but are available to respond to any situation at DOE request. A major advantage of this group is that it can mobilize large numbers of people on very short notice. This would be especially valuable, for example, in a situation where a large area were involved. In 1980, just outside El Paso, Texas, a truck carrying radiopharmaceuticals went off the road. A DOD teams was asked to respond to this situation and did so within 30 minutes. The package was promptly located and removed from the scene.

Implementing the response

DOE has established the Joint Nuclear Accident Coordinating Center In Albuquerque (JNACC). the JNACC was formed in 1958 to facilitate rapid response to accidents involving nuclear materials. Twenty-four hour phone numbers were set up to field requests for assistance. A call to either this numcer or the 24 hour phone number of the particular geographic region where the accident has occurred will set the response process in motion.

Essentially, transportation emergencies are divided into two categories, Government and non-Government shipments. When JNACC receives a call for assistance for a non-Government shipment, the Regional Coordinator for the specific geographic area involved is contracted.

A major component in the response process is the response teams of the individual States. The Regional Coordinating Offices work very closely with the States in their regions. Where a non-Government shipment is involved, the appropriate State authorities are contacted by the Regional Coordinating Office. A determination is then made as to whether the State authorities will respond and whether DOE assistance or advice is required. DOE will only respond in the first instance in a non-Government situation when requested to do so by States authorities.

Recently an aircraft accident in Michigan received a good deal of media coverage. A cargo plane, carrying a small package of radioactive materials, Americium for smoke detectors, crashed. The DOE emergency phone number for the DOE regional coordinator for the area was called. After discussion with the appropriate State agency, it was determined that the State would respond, and DOE would stand by in case advice or additional assistance was required. The accident occurred between 1:30 and 2:00 a.m., the team arrived at 5:30 a.m. and the package was located and determined to be intact by 7:00 a.m. This response is a good example of the close coordination and quick response time which DOE and the States provide.

Where a Government shipment is involved, one of the teams listed and described in paragraphs a-d above, will respond alone or in conjunction with a State team, as the State may request. The responding group will have a team mobilized within two hours. Once on the scene, a determination can usually be made very quickly as to whether or not a breach has occurred. Once it has been determined that no breach has occurred, accident clean-up may begin in normal fashion. It can be expected that the radiological assistance team will remain at the scene during the entire clean-up operation.

The Institute of Nuclear Power Operations ("INPO")

INPO developed a voluntary assistance agreement which defines terms and conditions under which a utility would provide assistance to another utility in the event of a transportation accident involving radioactive materials. As of June, 1983, 42 electric utilities have signed the agreement. In general, the Company requesting assistance notifies the responding company, which is a signatory company in the vicinity of the accident, of the type of assistance requested and the anticipated duration during which such assistance is desired. The responding company will be responsible for determining the procedures to be followed in furnishing such assistance and for supervising work at the site of the emergency. INPO provides certain administrative and emergency response support services such as preparing and distributing to signatories a list of sources of emergency manpower and equipment.

CONCLUSION

As indicated at the beginning of this statement, the transportation of radioactive materials has an exemplary safety record. Nevertheless, it is recognized that there is some risk in transporting any of the hazardous materials that are necessary in an industrialized society, including radioactive materials. Recognizing the need to ensure emergency response coordination between Fedeal, State, and local government entities, the Federal government established FEMA to provide that coordination. FEMA and the DOT are actively working with the States and localities to develop "first-on-the-scene" emergency response capabilities in the event of a nuclear materials transportation accident. These efforts, combined with the additional response capability provided by DOE and other Federal agencies, as well as INPO, show that the Federal government and private industry are committed to assisting States and localities in developing appropriate emergency response capabilities for radioactive materials transportation accidents.

STATEMENT OF FORD MOTOR CO.

Ford Motor Company is pleased to submit comments on the proposed omnibus safety legislation, S. 1108. We especially welcome the opportunity to address the specific proposals and timetables included in S. 1108, because these were not known to us when we testified before the subcommittee in March of this year.

As Ford testified in March, we have a number of engineering efforts under way that are certain to result in application of new safety technology to Ford cars in the near term. All of the vehicle safety issues addressed in S. 1108 are in some stage of research and development at Ford. Our efforts in the areas addressed by the bill are summarized below. Nevertheless, we do not believe that a legislative mandate is the best was to accomplish these goals.

Air bags

Ford is continuing its preparations to bid on the 5,000 car GSA air-bag equipped fleet, unless NHTSA rulemaking following the recent Supreme Court decision requires the full dedication of our engineering resources to another compliance program involving restraint technology. The GSA fleet will have a driver-side air bag system that supplements the standard three-point belt system. The driver-side approach will permit us to begin gathering effectiveness data—without waiting for the resolution of technical issues associated with passenger side systems. We would hope that if the test fleet shows good driver acceptance and system performance, we could then expand the offering to the general public.

In this regard, it must be recognized that there are important issues of air bag technology still unresolved—for example, effectiveness at high and low speed, effectiveness with and without belts, whether the customer will accept such devices and the associated costs, whether the customer and/or the insurance companies will replace the air bag after deployment and the problems related to disposal of systems in older cars. An even more fundamental concern is whether passenger air bags create risks for out-of-position occupants (particularly children) conceivably greater than those of the collision itself. Surely the cause of safety is better served by resolving these major concerns before air bags are required to be installed in millions of vehicles. We believe the best way to answer these questions is to get large test fleets on the road as quickly as possible.

Mandating one technological approach over another destroys all motivation to investigate other technologies that could be equally promising. If the sense of government is, nevertheless, to proceed with implementation of a particular approach, the public interest will gain much more from evolutionary development and introduction of the technology. Near-term, across-the-board implementation of air bag restraints would involve a major tearup of vehicle designs and systems—and if done with undue haste could possibly introduce negative factors into the performance of the system. It would be, should Congress so determine an implementation schedule, far better to begin implementation with all-new models and phase-in the new technology as other new models are introduced. In this way, manufacturers and the public have the benefit of what is learned in the development phase and the consumer is spared the enormous costs that would result from compressed timing. Even on an all-out basis and without regard for cost or existing cycle plans, the timing in S. 1108 simply could not be contained.

The Supreme Court has ordered the passive restraint matter back to NHTSA for further consideration. This move is certain to lead to a full opportunity for public review of all of the issues.

Bumpers

Bumper performance is a vehicle damage-resistance issue as it pertains to lowering automobile damage repair costs and insurance premiums. The issue does not involve occupant safety. It involves economics, a question of costs vs. benefits. After a long and detailed rulemaking process, NHTSA moved to relax the damage-resistance requirement beginning with the 1983 model year. As you know, Ford reviewed its 5 mph bumper systems planned for 1983 and decided that, with some minor changes, they offer real value to consumers. Today, all Ford cars meet Phase I 5-mph bumper requirements, not the cost-ineffective Phase II standards which were in effect before NHTSA's decision. We believe we have good vehicle damage protection systems and have sought to take advantage of our bumper systems in the marketplace. As a result of this action, insurance ratings on Ford vehicles are generally lower than on competitive cars in the same class.

Bumper performance is one area where the marketplace is working effectively in the best interest of the car buyer. As a practical matter, insurance ratings are acting to define damage-resistance criteria and cost-benefit. And this is clearly an area where NHTSA already has the authority to revise standards if needed. As not all manufacturers kept 5-mph bumper systems on their vehicles following NHTSA's relaxation of the bumper standards, an ideal opportunity exists to explore further the cost-benefit relationship.

Side impact

Ford believes that side impact protection is one of the most promising areas in which to advance vehicle occupant safety technology and we have an internal research and development program aimed at better understanding side impact crash dynamics. We have begun to incorporate some of the knowledge gained in our mid-1980's new car designs and will continue to implement new approaches as they are identified.

We are also working through MVMA on a coordinated side impact research program with NHTSA. Design factors influencing injury first must be identified, so that appropriate technical goals for improvement can be set. The other necessary step is to translate this knowledge into meaningful and repeatable test criteria against which new designs can be compared. This is an important and difficult task because in many cases the test procedures will significantly influence the technical approach to be used in designing a vehicle. Unless these test criteria are developed carefully with the total vehicle in mind they can easily interact negatively with other energy management systems and possibly reduce performance in other crash modes. If these present efforts point to an appropriate regulatory approach at some time, NHTSA can move in this direction when appropriate testing criteria are developed.

Antilacerative windshields

All vehicles today are equipped with windshields that resist occupant penetration in crashes and help prevent laceration. New technology is now in the prove-out phase that could offer even greater protection against cosmetic level injuries. Ford plans to equip a 2500 unit rental car test fleet in the 1984 model year with Securiflex windshields and to equip one-half of the anticipated GSA air bag fleet with this system. (Fifty Ford cars in the Maryland state police fleet are already equipped with these anti-lacerative windshields.)

An across-the-board anti-lacerative requirement would not be achievable in the S. 1108 timeframe. Presently, only one company in the world is believed to be capable of manufacturing this new type of windshield and it has productive capacity for only a relatively small volume of windshields. We have no doubt that when the test fleets show how to resolve remaining technical issues, a U.S. company will move forward to build the facilities; in no case, however, could this be done by next year.

High-mounted rear lamps

Ford plans to equip at least two of its mid-1980's car lines with high-mounted stop lamps. With few such systems on-the-road today, incorporating this technology must necessarily be a gradual process in order to help determine the relative effectiveness of different designs. The timing in S.1108 would not be containable and would deny the public the benefit of the learning process that occurs during evolutionary development and helps to assure that the most effective designs are engineered for different vehicle configurations.

Crashworthiness

Ford has made considerable progress in improving vehicle crash test impact performance in NHTSA's "New Car Assessment Program" which employs the criteria of certain Federal Motor Vehicle Safety Standards as measures of crash performance. We are very conscious of the fact that the Motor Vehicle Information and Cost Savings Act has required DOT since 1972 to study methods of fairly determining the relative "crashworthiness" of vehicles. However, no one—government, manufacturers or the insurance industry—has identified an objective means for comparative forecasting of actual occupant protection levels of passenger cars or trucks despite repeated attempts. When there is an acceptable basis for fairly and accurately comparing the occupant protection performance of different cars, Ford will determine what, if anything, needs to be done to seek to optimize its designs to this basis to become a leader in this area. However, we do not believe that a legislative mandate will solve the problems developing legitimate means of comparison that have so far eluded government and industry alike.

Beyond these unresolved technology and timing issues as to the individual provisions of S. 1108 is the question of cumulative impact. The time frames suggested in the vehicle-related provisions of S. 1108 do not take into consideration the extensive engineering, development and manufacturing efforts that would be required to implement any one of the specified technologies across the board, not to mention the compounding effect of trying to implement two or more of them simultaneously. Each of the proposed safety technologies separately would require a considerable commitment of engineering time and resources that are in very scarce supply, but the interactive effect of all these actions in essentially the same time frame would be a cumulative burden of massive proportions on the design and engineering capabilities of Ford. Such an undertaking easily could delay the timing of new model offerings, which are in turn needed to meet our long range fleet fuel economy objectives.

Ford supports the goals of many of the other provisions in S. 1108 and is encouraged that many such efforts are already well under way in the states with regard to child restraint, drunk driving, and reliable accident information. Ford also urges government efforts to increase driver and passenger awareness and responsiveness to the need for alert, safe driving and occupant "buckle up" habits.

Conclusion

Ford shares the concern of Senator Danforth and the Committee about motor vehicle safety. We believe that vehicle improvements—many made outside the scope of or long before regulatory efforts—have made important contributions to the decade-long downward trend in traffic fatality rates. We are committed to further improving the safety of our vehicles as promising approaches are developed. We would like to think that the specific items addressed in S. 1108 reflect the information NHTSA, Ford and other manufacturers have put on the record with regard to some of the most promising areas for vehicle improvement. However, we do not believe that any new vehicle-directed legislation is necessary or desirable but rather we believe that the Ford programs cited above indicate our commitment to work toward these goals.

Also, DOT is directed by statute to issue regulations and engage in the dissemination of consumer information in the key areas of vehicle technology addressed by S. 1108. The Department also has the responsibility of assessing these technologies in terms of their effect on motor vehicle safety and the reasonableness, practicability and appropriateness of requiring their application to various types of vehicles. In making these evaluations, DOT also will necessarily be evaluating the relative priorities that should be assigned to these technologies as opposed to other safety measures to which society's resources might be directed in the alternative.

In summary, we believe S. 1108 addresses many important areas of highway and vehicle safety. In the vehicle area, we cannot overemphasize the magnitude of the effort that would be required to comply almost simultaneously with all provisions of the bill. Ford assures the Committee that it plans to pursue the safety technologies contained in S. 1108 and any other promising approaches that come out of the research and engineering that is part of our ongoing design process.

We believe that NHTSA, which has been given the appropriate authority in these areas, is best suited for this task. In the non-vehicle areas, the bill takes the incentive approach and we think these incentives will help the cause of highway safety.

STATEMENT OF GENERAL MOTORS

The proposed Highway Safety Act of 1983 (S. 1108/H.R. 2693) is a four-part bill dealing with automotive safety, impaired driving, motor carrier safety, and the transport of hazardous materials. GM supports the bill's overall objective, which is to offer greater safety to motorists and to communities through which hazardous materials are transported.

To qualify as good safety law, the Act must strike a balance between society's concern for improving safety and its understandable resistance to unnecessary or impracticable ways of doing that. The National Motor Vehicle Safety Act created a system in 1966 to accomplish this objective. Under that system, Congress determines the nation's broad safety goals, while government agencies, following established rulemaking procedures, set specific performance standards that not only enable the country to meet those goals, but do so in a manner acceptable to the public. Manufacturers are free to determine what hardware will be used to meet those standards. This process has helped to ensure that benefits and costs of proposed rules are calculated and weighed against each other and that technical considerations affecting the timing of new rules are taken into account.

Although this system does not perform to the complete satisfaction of all parties at all times, it enables the government through the administrative rule-making process to base its regulatory programs on more detailed technical information than a legislative debate could typically accommodate. By legislatively mandating specific hardware such as air bags and polyurethane-coated windshields, the Highway Safety Act of 1983 would have Congress participate at the lowest most technically detailed level of the process rather than at the highest level, that of establishing goals and policy.

In many important areas, the bill also would deny the Secretary of Transportation the discretion and authority provided by the Administrative Procedure Act and would substitute rigid design requirements for performance standards that encourage innovation and competition among manufacturers. In other words, such equipment mandates establish ceilings which would not be exceeded rather than floors above which manufacturers may go for competitive advantage. Such rigid requirements not only deny manufacturers much needed flexibility but, in the case of anti-lacerative windshields, would have the effect of providing a legislative monopoly for a specific product now available only from a single European company.

Title I—Automotive Safety

Title I would require manufacturers to provide specific hardware, including 5 mph bumpers, anti-lacerative windshields and high-mounted stoplamps on all cars beginning in model year 1984, and air bags on all cars beginning in model year 1985. This title also would require manufacturers to report the results of laboratory tests of undetermined safety relevance and print test results on a window sticker. Finally, a revised side impact standard would have to be issued under this title by July 1, 1984.

GM supports, and has been actively pursuing, some of the directions this title proposes. For example GM supports rulemaking to allow the use of anti-lacerative windshields, although we are opposed to mandating them at this time. Important questions must be answered first about possible hazing, delamination and discoloration in the wide range of climatic conditions that prevail in this country, as well as cost and domestic production capacity. GM is conducting a field evaluation of these windshields at this time to address these concerns (Attachment 1).[1] In addition to being premature, the bill's provision for anti-lacerative glass also appears to be unnecessarily design-restrictive. Its requirement that the inner liner of the windshield be polyurethane would disqualify materials now under development that may be equally effective in reducing injuries but which are not polyurethane. Rather than Congress imposing a simplified equipment requirement, it would be more prudent for Congress to exercise its oversight in auto safety to be certain the problem is being properly evaluated and progressing toward a realistic and effective performance standard. At the present time, the proposed provision on anti-lacerative glass in the statute would create a virtual monopoly for a single foreign manufacturer, even though it is questionable whether that manufacturer has production capacity to supply the market.

Another area of study and eventual rulemaking proposed in Title I is truck safety. GM supports efforts to learn more about heavy truck safety, and through the Motor Vehicle Manufacturers Association (MVMA), has contracted a comprehensive, detailed analysis of heavy truck accident data to learn more about why truck accidents occur so steps can be taken to prevent them. As part of this study, travel by type of truck, type of road, time of day, weather conditions and other factors is being examined so accident rates can be calculated for different kinds of trucks under different conditions.

Title I also would authorize grants to states to encourage wider enforcement of laws requiring use of child restraints. GM is proud of its pioneering role in the development and introduction of infant and child restraint systems and supports reasonable legislation designed to further their use.

While side impact, anti-lacerative windshields, truck safety and use of child restraints appear to be promising areas for safety improvements, the benefits of other provisions of Title I are much less certain:

Air Bags.—It is difficult to estimate how great an increase in occupant protection air bags would offer because their effectiveness is limited to certain kinds of accidents and is affected by belt use. Also, while we believe air bags are technologically practicable in full and intermediate size cars, we have not developed a system for subcompact vehicles, nor are we aware that anyone has yet done so. This could prove difficult or even impractical. We do know, however, the benefits of air bags would not exceed the benefits that would be realized if people used the seat belts already available in almost every car on the road today. It is ironic that in introducing the bill, cosponsor Senator Claiborne Pell discussed the provision of this title that would encourage the states to mandate the use of child restraints, noting that child restraint laws "make a great contribution to highway safety." What he says is also true for laws requiring adults to use active restraints—as many other countries are demonstrating. In that regard, we are encouraged by a number of state legislative proposals to require belt use and believe these initiatives should be given all possible support.

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[1] The attachments are in the committee files.

Moreover, if the federal government believes it has the responsibility to provide additional occupant protection to American motorists, then it should enact a law that would improve protection for everyone, immediately, at a minimum cost. A mandatory belt use law would have that effect. If the government is too uncertain of its mandate in this area to take such a step, then it should consider carefully the propriety of intervening to force Americans, many of whom now use their seat belts, to spend millions of dollars to purchase alternate protection in their vehicles that is no more effective, and may well be less effective, than the belts already available to them (Attachment 2).

5 mph bumpers.—GM's position that 5 mph bumpers do not offer better value overall for our customers is well documented, as is the fact that increasing bumper test speeds to 5 mph will not have any significant effect on safety (Attachment 3). A more specific concern that we have with this requirement of the bill is that it would allow the Secretary of Transportation to set a standard higher than 5 mph, but would remove the language from the Motor Vehicle Information and Cost Savings Act that instructs NHTSA to set a standard that maximizes cost savings for consumers. Absent both a safety need and instructions to maximize cost savings, we are forced to conclude that the 5 mph bumper provision is totally arbitrary.

High-mounted stoplamps.—Although it has never been demonstrated that high-mounted stoplamps play any role in increasing occupant safety, they appear to have a relationship to property damage—a matter of at least equal concern to the insurance industry. Little is known, though, about why the experimental systems have been effective in reducing rear end accidents, or if they would reduce the frequency of injury accidents. An understanding of "why" should allow the development of a less design-restrictive and more effective standard. GM recommends further research be under taken in this area before a standard is issued (Attachment 4).

Crashworthiness labeling.—This requirement would impose considerable costs on automobile manufacturers and their customers while producing information that actually may mislead consumers, since no accurate labortory measure of the potential safety of a vehicle in real world accidents has ever been developed. Moreover, the variation possible in crash test results is still so great that any rating scheme considered by NHTSA to date could lead consumers to make erroneous safety judgements in purchasing a car. (Attachment 5.)

GM estimates that the addition of air bags, high mounted stoplamps, 5 mph bumpes, and anti-lacerative windshields would increase vehicle weight by 70 to 80 lbs. Equipping all passenger cars with these devices would increase fuel consumption in the U.S. by about 630 million gallons a year. The cost to the consumer of these devices would be $600 to $700 per vehicle. In addition, GM estimates it alone would incur $6 million in first year costs for a certification testing program for crashworthiness ratings and $2.3 million in certification costs in subsequent years. The cost to consumers of affixing crashworthiness rating labels to windows would be an additional $2 million per year—for GM alone.

Title II—Impaired Driving

Title II would provide incentive grants to encourage states to make 21 a minimum drinking age and police the sale of alcoholic beverages to minors. It would also expand existing criteria for federal drunk driving grants to include the creation and operation of rehabilitation and treatment programs for drugged drivers. Finally, it would authorize grants to states to computerize their driver record systems so problem drivers could be identified more readily.

GM supports the minimum drinking age of 21 for the reasons that have been presented by the Presidential Commission on Drunk Driving, the National Transportation Safety Board and various members of Congress. We believe, however, that it would be preferable to evaluate the impact of the federal grant program for drunk driving that went into effect this year before making additional grants available to states to enact a 21-year-old drinking age.

Title III—Motor Carrier Safety

Title III of the Highway Safety Act of 1983 would direct the Secretary of Transportation to initiate rulemaking to improve safety and minimize health risks for heavy-duty truck operators. As a shipper, GM shares concern that commercial transportation be conducted in a safe and healthful manner.

GM also could be impacted by rules promulgated under this title in its role as a truck manufacturer. The issue of minimizing health risks for heavy-duty truck operators has been addressed by various organizations, including the Federal Highway Administration (FHWA). In formal rulemaking, FHWA has addressed toxic gases in truck cabs, ambient temperature in heavy-duty truck cabs, and minimum cab space dimensions. Research to date on these and other issues, such as truck ride and interior noise, has failed to demonstrate a safety need in these areas either in terms of accident causation or long-term effects on driver health. It is our understanding that FHWA plans no action on the above issues in the near term, yet the bill would require the Secretary to promulgate rules in this area and do so within one year after they were proposed.

We do not believe one year is enough time to address adequately the issues involved in most aspects of motor carrier safety. The relatively small number of trucks on the road do not quickly generate enough accident data to determine what standards would be helpful. The Motor Vehicle Manufacturers Association and the federal government are coordinating research in this area, but more information will be needed before standards that are responsive to real-world safety needs can be developed.

Title IV—Transportation of Hazardous Materials

The last title of the Highway Safety Act would address the need for safer handling of hazardous materials transported cross country. Having sought greater uniformity among federal, state and local regulations in this area for many years, General Motors wholeheartedly supports Title IV's objectives.

We believe, though, that it would be potentially misleading to include "packaging" on the list of functions to be regulated under this bill (Sec. 404). While the Department of Transportation now has the authority to require shippers to use approved packages to transport hazardous materials, it would not be appropriate to give the department the authority to regulate the general subject of "packaging" in our plants. The multitudinous kinds, purposes and uses of packaging in the commercial world fall outside the jurisdiction of the statute that now regulates transportation of hazardous materials. Choices about packaging in these areas should be regulated only by the dictates and requirements of the marketplace, as is the current practice. The situation could be clarified by changing the words, "a transportation-related function such as loading, unloading, packaging or stowage" to read, "a transportation-related function such as loading, unloading or stowage. The act of packaging shall be included within the scope of this regulation only to the extent it is directly related to the transportation of hazardous materials."

Summary

GM supports the overall goal of the proposed Highway Safey Act of 1983 (S. 1108/H.R. 2693) and, with the reservations noted above, the following specific objectives: Development of field-relevant side impact standard; more widespread use of anti-lacerative windshields; efforts to develop and analyze truck accident data so effective standards can be developed; wider use of child restraints; encouraging states to enact a minimum drinking age of 21 years; Federal rulemaking to improve safety in the transport of hazardous materials.

GM is opposed, however, to provisions of this bill that would mandate specific equipment or procedures of questionable value to our customers, including air bags, high-mounted stoplamps, 5 mph bumpers, application of polyurethane windshield liners and labeling of vehicles by crashworthiness.

Highway Users Federation,
Washington, D.C., June 13, 1983.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: The Highway Users Federation is a national coalition of businesses, industries, and individuals working for safe and efficient highway transportation.

We are concerned that Section 304(2)(B) of S. 1108—The Highway Safety Act of 1983—will adversely impact vanpool programs. By defining commercial vehicles to include vanpools, S. 1108 would subject vanpool programs to a variety of new and unnecessary vehicle and operating requirements. Vanpools should not be included in the definition of commercial vehicles.

Vanpool programs are not commercial endeavors. Vanpool programs are a service provided for workers by employers. In most cases vanpool drivers are regular company employees who receive no additional compensation for driving vanpools.

The Federation and its members helped pioneer the vanpool movement in the early 1970s. Many Federation members operate vanpool programs. They are committed to vanpooling because it is a cost-effective and fuel-efficient method of highway transportation. Their communities benefit because vanpools improve traffic movement by reducing congestion on roads and streets.

Vanpools should be exempted by amending Section 304(2)(B) to provide that only vehicles designed to transport more than 15 passengers are considered commercial vehicles.

Sincerely,

PETER G. KOLTNOW.

NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION,
Washington, D.C., June 14, 1983.

Hon. JOHN C. DANFORTH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: The National Agricultural Chemicals Association (NACA) supports a uniform national regulatory scheme for hazardous materials transportation. We, therefore, wish to commend your initiatives in support of this objective as contained in Senate bill 1108, Part IV. In your preparation for the scheduled Senate Commerce, Science, and Transportation Committee's hearings on Senate bill 1108, we are pleased to submit our comments on Part IV—Hazardous Materials Transportation Act Amendments of 1983.

The National Agricultural Chemicals Association (NACA) is a nonprofit, trade organization of manufacturers and formulators of pest control products employed in agricultural production. NACA's membership is composed of the companies which produce and sell virtually all of the technical crop protection materials (active ingredients) and a large percentage of the formulated products registered for use in the United States.

NACA recognizes the importance of a uniform national regulatory scheme for hazardous materials transportation. We also recognize that any such scheme must be practicable, balancing the federal and state/local roles to ensure a continued, safe movement of hazardous materials from point of origin to final designation. To effect these objectives, NACA believes the following to be essential:

1. Federal DOT should have sole responsibility affecting technical matters, including, but not limited to, hazardous materials classification, definitions, descriptions, documentation, marking, labeling, placarding, packaging and equipment for transportation. Any state or political subdivision requirements which are additional to or inconsistent with federal requirements in this area should be preempted.

2. With respect to operations of hazardous materials carriers, including, but not limited to, prenotification, routing, bans, or time-of-day restrictions, there may be situations where local circumstances or conditions exist that could be best met by rules issued by those directly affected. No state or political subdivision, however, should issue or enforce requirements in this area except in accordance with established criteria, promulgated as performance standards by federal DOT. The criteria issued by the Secretary of Transportation should address: (1) the uniqueness and need for such action and (2) the full consequences of the requirement, which include the safety of citizens in any other jurisdication that will be affected by the requirements, as well as the practicability and safety of the requirement upon the transportation movement.

The NACA comments to follow will focus on specific aspects as contained in Senate bill 1108.

1. *Section 120(b).*—Finding of "needless duplication" must not be used to crutail private sector initiatives in developing tranining programs, even though such programs may appear to, or actually do, duplicate other programs whether private or governmentally operated.

2. *Section 120(d).*—NACA wishes to point out that there should be no implication in this language to preclude: Regional centers operated by private sector; or Regional centers operated by private contractors on behalf of government.

3. *Section 122(a)(2).*—Unless demonstrated otherwise through a valid study or other methods for determining needs, NACA is opposed to granting power to state or local authorities to regulate modal choice. NACA maintains this power properly

resides solely at the Federal DOT. Modal decision-making should be accomplished uniformly with safety considerations being of prime consideration. Once a hazardous material is authorized for transport by a specific mode, that authorization should be recognized nationally. To do anything to the contrary would result in unnecessary intermodal transfers, with resulting degradation in safety due to additional handling of hazardous materials.

4. *Section 122(a)(3).*—It should be emphasized that any routing regulations or prenotification system in which the Secretary is authorized to establish under Section 122(a)(1) clearly establish criteria for evaluating and balancing the needs of specific jurisdiction and the expected benefits against the practicability and burden on the carrier in complying.

5. *Section 123(a)(5).*—In any establishment of communications networks, full consideration should be given to existing networks such as CHEMTREC and the NACA Pesticide Safety Team Network (PSTN). Full integration of the chemical industry in any new networks established is also important, in order to avoid duplication which could hinder emergency communications, in addition to being unneessarily costly.

Finally, although not addressed in Senate bill 1108, NACA believes it essential that any legislative action designed to enhance emergency response to hazardous materials incidents should also include Good Samaritan considerations. Anyone rendering assistance or advice towards preventing, mitigating or cleaning up a hazardous material incident must be provided adequate liability immunity.

Sincerely,

JACK D. EARLY, *President.*

DOW CHEMICAL U.S.A.,
Midland, Mich., June 17, 1983.

Hon. JOHN C. DANFORTH
Chairman, Surface Transportation Subcommittee, Senate Commerce Committee, Washington, D.C.

DEAR SENATOR DANFORTH: The Dow Chemical Company has a sincere interest in title IV of S. 1108 and would like to explain our position and thoughts in the matter. First let me comment briefly on Dow's business activities and our interest in safety.

The Dow Chemical Company is a Delaware Corporation with its headquarters in Midland, Michigan. It is engaged in the manufacturing of agricultural and heavy industrial chemicals, plastics, metals, pharmaceuticals and consumer goods. Dow and its wholly and principally owned subsidiaries have over 100 manufacturing locations in the U.S. and 28 other countries. Gross sales for 1982 were in excess of ten billion dollars, one-half of which was in the U.S.

In the course of doing business it is necessary to transport our products by all modes of transportation both in packaged and in bulk. It is estimated that over 80 percent of our volume products are considered hazardous to some degree.

Since the surface mode is the key method of transportation for the majority of our products as well as our distributors, customers, and suppliers, we have a vested interest in any legislation that would affect the safety and serving in the distribution of our products.

Let me preface my comments by pointing out that Dow has a fundamental concern for all who manufacture, distribute and use our products and for the environment in which we live. It is management's objective to transport its products by all modes free of incidents that could be harmful to life or the environment. To this end we take great care in the selection of carriers, design and manufacture of equipment and the training and expectations of personnel.

We are of the firm opinion that incidents in chemical transportation are obstacles to overcome and problems to be solved and not hardships to be endured. Perfection is our long range objective. It is within this concept of safety that we offer our attached comments.

Sincerely,

KEITH J. BUNTING,
Manager, Distribution Government and Public Affairs.

POSTITION STATEMENT ON S. 1108 TITLE IV SECTION 401 THROUGH SECTION 406

1. These comments apply only to that Section of the bill cited as the Hazardous Materials Transportation Act Amendment of 1983. Covered by title IV Section 401 through Section 406 (Pages 42–56). This should not imply that we are taking any position on the balance of the bill.

2. The intent and purpose of the bill has merit, but there are some parts that need to be changed in order to obtain industry support, as far as DOW is concerned. The primary concern is the use of the word prenotification in Section 122. The other being the inclusion of the Federal Emergency Management Agency.

3. The word pre notification in transportation jargon means that the shipper and or carrier would be required to provide advance notice on each shipment. This becomes a tremendous communications problem as well as there not being any satisfactory method of conveying this information to all shippers and carriers throughout the land. Not only would the handling of the information create an administrative burden to an agency in the community, the information would be inaccurate, incomplete and slow to develop and not necessarily compatible with other information systems that may be developed by other communities or states or DOT.

4. It is suspected that Section 122-1-(B) is intended to enable the Federal Government to develop a central source on the movement of hazardous materials that could provide meaningful information to states, municipalities, etc. on a reasonably current basis as to what hazardous materials travels through their area. Its purpose is to insure the training of their emergency response personnel. If this is the case, then the word pre-notification should be avoided and referred to as an "advisory information system or census." Any other description could be used as long as they excluded the word prenotification.

5. Therefore, it is suggested that the title on line 20 page 50 be changed to read: "Routing and Advisory Information System." In paragraph (B) line 4 page 51 the word prenotification be stricken and substituted by advisory information. In addition, in line 5 of paragraph (B) the words "in advance and timing" should be stricken.

6. It is noted that in subtitle B, page 45, the Federal Emergency Management Agency has been included with respect to establishing a training program for incident prevention and response. Granted FEMA has a role to play in our civil defense, national disasters, flood, etc., but the hazardous materials incidents are not of that magnitude and requires a different type of training. In our opinion this could be handled by DOT and private enterprise at a lower cost. We recognize the need for this training and the magnitude of the task, if in the opinion of DOT/HMTB that FEMA needs to be involved, then we will be understanding of their wishes. However, the wording of the bill should be made clear that the DOT/HMTB has authority to set standards and to stimulate appropriate action.

7. Though the bill considers some of the problems, there are other concerns that need to be addressed. The prime one being the need for stronger federal preemption language and a clear delineation of federal, state, and local roles and their responsibilities in ensuring safety in the transportation of hazardous materials. Without some more definitive guidelines, state and local officials will continue to establish laws and ordinances that in their opinion will provide a greater degree of safety to their constitutents. In many cases to the detriment of safety to other localities and ofter an unreasonable burden to commerce.

8. The other concern that is significant is the funding for the bill. To implement the intent of the legislation it would require a substantial sum of money. It appears that sourcing of funding is noticeably absent.

9. Following the hearing we would like the opportunity to meet with members of your staff for further discussion on some of the vital issues.

10. Enclosed you will find a copy of the bill that has been marked up in accordance with our suggestions.[1]

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS,
Washington, D.C., June 29, 1983.

Hon. JOHN DANFORTH,
Chairman, Subcommittee on Surface Transportation, Washington, D.C.

DEAR SENATOR DANFORTH: The National Association of Wholesaler-Distributors is a federation of 120 national wholesale distribution associations (see attached) which have an aggregate membership of approximately 45,000 wholesaler-distributors, with 150,000 places of business.

The members of our constituent associations are responsible for 60 percent of the $1 trillion of merchandise which will flow through wholesale channels this year, according to the Commerce Department. They employ a comparable percentage, or 3 million, of the 5 million Americans who work in wholesale trade.

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[1] Retained in Committee files.

Although the individual firms which our organization represents are small- to medium-sized businesses individually, their collective economic importance is most significant.

We wish to express for the record our comments on S. 1108 specifically, title III of that legislation.

In one form or another, this legislation has been before Congress and this Committee since the 95th Congress. Each attempt significantly expands the Department of Transportation's regulations based on data claiming that the problem of fatal and injury producing crashes involving large trucks falls more heavily on automobile drivers and passengers than on truck occupants. Also, the fatality rate of those accidents are pointed to with alarm and the claim is immediately made that more safety restrictions on trucks are needed.

Unfortunately, none of the statistics produced to date give any indication of who was at fault when the accident occurred. This is crucial to the presumption that a substantial increase in the scope of DOT's authority under the Bureau of Motor Carrier Safety would make a difference in the percentages of deaths occurring when a passenger vehicle collides with a truck.

In recent years, this Committee has enacted the most important provisions included in S. 1108's predecessors, i.e., the 97th Congress enacted legislation establishing the National Drivers Register and authorizing DOT Highway Safety Grant Programs. Also, Congress passed the drunk driving legislation and Title II of S. 1108 will strengthen that law. NAW strongly supports that effort.

We would like to point out that since this legislation was first introduced, increased international competition in the truck and automotive manufacturing industries, as well as technological improvements, have resulted in improved quality of vehicles with a salutory effect on safety. Crashworthiness of cars has improved, as has that of trucks. For the first time, National Transportation Safety Board statistics show from 1981 to 1982 that the fatalities of truck occupants decreased, and that from 1980 to 1982 fatalities associated with incidents involving trucks also decreased.

There are few, if any, provisions in Title III that specifically address safety problems, but there are numerous provisions which serve to establish or revise the statutory scheme for the safety regulation of commercial motor vehicles.

NAW seriously questions whether any new regulations for trucks developed under Title III of S. 1108 would truly achieve the intended goals of safety improvement but rather would only result in more paperwork and other costs to the wholesale distribution industry (and ultimately to the consumer) with highly doubtful benefits to the public as a whole.

As an industry of small businesses, who by and large operate within commercial exempt zones or in intrastate commerce, NAW strongly objects to the interpretation under Section 304(1) of "commerce" using the term "affects trade" to extend BMCS regulations into intrastate commerce and commercial exempt zones. Very little of our industry's truck transportation falls under the interstate commerce definition currently used by the Bureau of Motor Carrier Safety and NAW believes current state laws adequately protect the public vis-a-vis vehicles that operate intrastate or within commercial exempt zones.

As on previous occasions, NAW continues to urge that the number of BMCS inspectors be increased and that long-haul, over-the-road trucks be adequately regulated by the Bureau before Congress tries to expand its authority to intrastate commerce or transportation within a commercial exempt zone. The Bureau's regulations should be proven to be of significant value before they are expanded into intrastate commerce.

In that regard, NAW strongly disagrees with comments made before your Committee by Senior Vice President, Ben Kelly of the Institute for Highway Safety when he attempts to equate provisions of the Surface Transportation Assistance Act of 1982, which increased the size and weight of trucks with higher fatality rates.

In fact, his comments are in direct conflict with the April 1977 study by the National Highway Traffic Safety Administration titled, "The Severity of Large Truck Accidents" which states in part, "it is found that the *accident location has a far greater effect on accident severity than does the size or weight* of the truck. An accident is most likely to be severe (as measured by fatality to a car occupant) if it occurs on a rural, two-lane road. Rural four-lane roads have proportionately fewer severe accidents, and residential/business roads have proportionately fewer yet. *Once accidents have been classified by location into these three categories, accident severity does not vary significantly with either the size or weight of the truck involved." (Italic added)*

The Bureau, we would point out, already has authority to deal with the safety issues of trucks engaged in interstate commerce. We note that even the Director of BMCS registered opposition to the provisions of the bill regarding mandatory inspections, noting that the Bureau felt the existing self-inspection system was adequate and should continue. Director Kenneth Pearson pointed out that under S. 1108 approximately 8 million motor carriers would be required to be pulled off the road for at least a day, once a year, for these inspections at a cost of approximately $500 million.

Historically, NAW has been a strong supporter of periodic motor vehicle inspections as a method to increase safety on the nation's highways. Based on BMCS "out of service" records obtained on highway inspections, we cannot but agree that the long-haul, over-the-road truck which accumulates a tremendous amount of mileage each year, should be subject to safety inspections; possibly even more often than annually. However, since some 37 or 38 states have already adopted "little BMCS" regulations, NAW believes the institution of mandatory federal inspections on vehicles involved in intrastate commerce within commercial exempt zones is unnecessary. These vehicles are already subject to state motor vehicle inspection systems, and to add a federal motor vehicle safety inspection would be costly in that intrastate carriage and carriage within commercial exempt zones would face an entirely new set of additional regulatory and paperwork burdens.

In recent years, we have seen Congress attempt to justify intrastate regulations using BMCS violations statistics gathered during nationwide road checks of large interstate, over-the-road vehicles and drivers. There is no substantive data base on intrastate safety to justify such legislation.

We note that Section 310 of the bill expands DOT's authority for civil penalties. In our opinion, such a provision sets up the agency as "judge and jury." Moreover, in our opinion the fines are excessive and should regulations expand those penalties to intrastate commerce, our small wholesaler-distributor members would find it financially prohibitive to enter into the litigative process. This would lead in most cases to their simply paying the penalty. Even when they know they are right, attempting to go through the expensive and time consuming process of an appeal is beyond the resources of most small businesses. This kind of authority handed to a federal agency, we believe, diminishes our industry's right to "due process" and would expose wholesaler-distributors to a levy of civil forfeitures by the DOT for innumerable regulatory requirements that are totally unnecessary for the operation of a wholesaler's delivery vehicle in intrastate commerce, or within a commercial exempt zone.

A good portion of delivery trucks used in the wholesale/distribution industry fall within the "10,000 pound GVWR and under" exemption and many others fall within numerous commercial zone exemptions. We do not believe wholesale distribution firms operating in intrastate commerce (i.e., within a state or within the boundaries of a commercial exempt zone exemption), should face the burdens currently imposed on the interstate trucking industry. Complicated driver logs and other BMCS regs serve a very useful function in the over-the-road interstate trucking, but NAW strongly believes no case has been made for the need to extend this type of comprehensive, burdensome, regulatory scheme on delivery trucks operating in interastate commerce.

When and if a statistical base is ever developed which shows that such increased DOT authority is necessary, then NAW would of course be amenable to a reasonable and limited adoption of some of the provisions contained in Title III to intrastate commerce. But, currently those figures do not exist! Until they do, we find no justification for Title III.

NAW also objects to OSHAizing the Bureau's functions. The bill would authorize the Secretary to conduct "on-the-job" inspections and investigations on intrastate vehicles. The Bureau already has the authority to do this on interstate carriers and, in fact, currently does so. Giving BMCS OSHA-type authority for intrastate commerce is totally unjustified and unnecessary. We believe the OSHA-type authority for the Bureau would have our wholesaler-distributors facing an uncomprehensible set of state and federal regulations and requirements. BMCS inspectors would be attempting to enforce regulations which were not, in fact, founded on data related to intrastate trucks.

In summary, we strongly disagree with the expansion of the DOT's authority under title III of S. 1108 and would instead encourage increasing the ability (in its most effective arena) of the Bureau of Motor Carrier Safety to enforce its existing regulations of the long-haul, over-the-road truck by increasing the number of inspectors.

Until the agency can adequately monitor and control what is currently occurring in interstate commerce, there should be no thought of attempting to begin expansion of their authority to intrastate commerce. Moreover, as we have attempted to point out in this statement, there is no justification (statistical or otherwise) for that expansion. The current state regulatory setup works well and should not be preempted or added to by federal authorities.

Finally, Mr. Chairman, we urge that title III of S. 1108 be deleted until there is a statistical base developed which indicates that: (1) in the pursuit of highway safety, intrastate trucks are causing more fatal accidents; and, (2) such legislation would prevent that from occurring.

NAW believes that a far more positive impact on highway safety would be made by providing more resources to the Bureau of Motor Carrier Safety to enforce their current regulations on interstate carriers to include more inspectors.

We appreciate this opportunity to present the position of the wholesale-distribution industry and respectfully request this letter be made part of the hearing record.

Respectfully submitted,

RICHARD F. TURNEY,
Transportation Consultant.

AMERICAN BAKERS ASSOCIATION,
Washington D.C., June 30, 1983.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, Washington, D.C.

DEAR MR. CHAIRMAN: The American Bakers Association (ABA) takes this opportunity to write in support of several amendments to Title III of S. 1108, the proposed "Motor Carrier Safety Act of 1983", and requests that these comments be made part of the hearing record with respect to this legislation.

I. *The American Bakers Association.*—Before turning to specific issues regarding S. 1108, we wish to describe the ABA and its interest in this legislation. The ABA represents over 350 companies engaged in the wholesale baking industry and related trades. ABA member companies operate approximately 1,000 plants and produce and distribute 80 percent of the commercially baked bread and other bakery products consumed in the United States. These products are delivered to retail stores, hospitals, nursing homes, schools, and other institutions, principally by some 125,000 small delivery route trucks. The baking industry has the third largest fleet of trucks of U.S. industry groups.

The vast majority of the trucks owned and operated by ABA members are lightweight trucks, used almost exclusively in local pick up and delivery service, not in long distance over-the-road movements. Most of these lightweight trucks are rated at under 10,000 pounds gross vehicle weight rating (GVWR), though a significant number are rated at between 10,000 and 15,000 pounds GVWR.

II. *Overview of ABA concerns with S. 1108.*—ABA members have a longstanding interest in ensuring the safe operation of trucks, and we commend you and the other sponsors of S. 1108 for dedicating significant time and effort to highway safety issues.

However, we are also concerned that Title III of S. 1108, as introduced, may result in a significant regulatory focus on lightweight trucks used in local pick up and delivery service, vehicles which are comparable in their performance and handling characteristics to passenger cars. The possibility of such an outcome is quite disturbing to us in that we do not understand considerations respecting the safety of these lightweight vehicles to be a motivating force for enactment of S. 1108. In this regard, in the public hearings on Title III of S. 1108 we observed that several witnesses were anxious over possible safety problems that may result from the interaction on the highways of very large trucks and small cars. On the other hand, we observed no witnesses alleging particular safety problems respecting the operation of small trucks used in local pick up and delivery service.

We are concerned that, by expanding the scope of Federal safety regulation to include numerous small delivery trucks, including those operating in intrastate commerce, S. 1108 may create paperwork costs and administrative burdens out of all proportion to any safety benefits that may be derived from such expansion of regulation. Our concern with the paperwork and administrative burden that may result is founded in the history of regulation in this area. A survey by the Office of Management and Budget, described in the March 2, 1982 Washington Post, indicated that 5 of the 20 Federal forms most burdensome to the public are forms required by the Bureau of Motor Carrier Safety (BMCS), the agency within DOT responsible for safe operation of commercial motor vehicles. The article indicated that, taken as a whole, the BMCS alone imposes a greater burden, in terms of hours required for the public to complete forms, than any Cabinet agency except the Treasury Department (tax forms). Thus, while we are most concerned with highway safety, we submit that any legislation proposing an expansion of BMCS jurisdiction be very, very carefully considered to determine whether safety benefits can truly be expected to result, or rather than only a flood of additional paperwork would follow from any expansion of such jurisdiction. Further, we believe that, with respect to certain lightweight vehicles, S. 1108 moves in the wrong direction.

Another significant concern of the ABA, which will be discussed in greater detail below, is that commercial motor vehicle safety would be enhanced through legislation requiring motor common carriers of property to carry cargo insurance at higher levels than required under present law. An amendment to S. 1108 to that effect would create an important incentive for safer operations.

Accordingly, we write to suggest how S. 1108 could be amended to meet our concerns, and to particularly ensure that the bill, if enacted, would not result in needless regulation of lightweight trucks, vehicles which have not been alleged to have created any safety problem necessitating remedial legislation. These amendments, if adopted, would enable us to offer strong support for the legislation, the kind of support which we simply cannot offer with respect to the bill as introduced.

III. *Regulation of lightweight vehicles under S. 1108.*—As indicated above, the primary concern of the ABA with respect to S. 1108 is that it would result, inappropriately, in greatly increased regulation of lightweight vehicles of 15,000 pounds GVWR and less. These vehicles are used almost exclusively in local delivery service, not over-the-road movements.

It has long been recognized that lightweight vehicles used in local service should not be subject to the same regulatory scheme as over-the-road vehicles. Thus, the BMCS has developed broad exemptions from regulation both with respect to the operation of vehicles rated at under 10,000 pounds GVWR and also with respect to vehicles (regardless of weight rating) operated within commercial zones.

We suspect that this regulatory background has led the sponsors of S. 1108 to exclude from the scope of Title III vehicles rated at 10,000 pounds GVWR and less. While we commend the sponsors of S. 1108 for recognizing the need to develop a lightweight vehicle exemption, we urge the Committee, in any further consideration that it gives to S. 1108, to amend the lightweight vehicle exemption to include vehicles of up to 15,000 pounds GVWR, so that the legislation will be up to date with modern automotive technology and reflect the fact that these vehicles are used exclusively in local service.

Since the BMCS developed the present 10,000 pound GVWR exemption from its regulations in the 1970's, the vehicle manufacturers and their suppliers have continually improved (and continue to improve) technology with respect to, among other things, tires, brakes, wheels, power steering, transmission, steering geometry, and the use of lighter, more durable and stronger materials. As a result, today's vehicles rated at between 10,000 and 15,000 pounds GVWR have operational and handling characteristics similar to those of older 10,000 pound GVWR vehicles.

We emphasize that the trucks at 10,000 to 15,000 pounds GVWR are rated higher than trucks rated at under 10,000 pounds GVWR. However, they are configured virtually identically to their counterparts rated at under 10,000 pounds. That a 10,000 pound GVWR cutoff arbitrarily excludes from the lightweight vehicle exemption trucks which have similar handling and physical characteristics to those within the exemption is even more readily apparent when one considers that changes to a vehicle as simple as downsizing tires and changing springs can reduce GVWR by thousands of pounds.

Very significantly, that today's vehicles of from 10,000 to 15,000 pounds GVWR have driving and handling characteristics similar to those of vehicles rated under 10,000 pounds was very recently confirmed in tests undertaken, during May 1983, for the BMCS by the University of Michigan. Those tests found that vehicles of 14,200 pounds GVWR had the same effective rollover threshold as vehicles rated at less than 10,000 pounds GVWR. In addition, in a pending regulatory proceeding before the BMCS, the ABA, many other associations, and even insurance companies, have expressed the view that the handling and other operational characteristics of 10,000 to 15,000 pound GVWR vehicles are, for practical purposes, identical to those under 10,000 pounds GVWR and that these vehicles are used only in local service.

Thus, it is clear that these vehicles fully meet the criteria that have been used to justify the present lightweight vehicle and commercial zone exemptions. Accordingly, we believe that the Congress should ensure that scarce safety resources are not dedicated to regulation of these vehicles (and preclude the needless imposition of paperwork regulation on the operators of these vehicles) by defining the scope of the lightweight vehicle exemption in accordance with these realities. Therefore, we would amend the definition of "commercial motor vehicle" in S. 1108, § 304(2), by striking "10,000 or more" at page 23, line 4 and inserting in lieu thereof "more than 15,000".

Further, we also note that the single overriding incentive for vehicle operators to take any necessary safety precautions will continue in effect after the adoption of this amendment. That single overriding incentive is the desire to complete an opertion without incident. Accidents can mean property damage, delay, and, more importantly, even personal injury or death. Thus, the amendment recognizes that drivers and companies, which have a tremendous interest in conducting operations safely, will maintain that interest, even if regulatory requirements are no longer applied.

Several technical and conforming amendments are necessary to ensure that the basic intent of this first amendment is fully achieved. The present safety statute, 49 USC § 3102, should be amended to provide the same focus to BMCS regulation of commercial motor vehicles as would be provided under § 304(2) of S. 1108 as we would amend it. The rationales set forth above are just as applicable to regulation under the present statute as to regulation under S. 1108. Thus, assuming adoption of the first amendment, unless the present statute is also amended the BMCS could, under its existing authority, regulate vehicles that the Congress would have seemingly intended (in enacting such a comprehensive scheme as S. 1108) not to regulate.

As a further technical change, to ensure that amendments designed to focus DOT's safety regulation on vehicles rated higher than 15,000 pounds GVWR do not inadvertently invite allegations that the Congress intended thereby to invite regulation by other Federal agencies (such as OSHA), S. 1108 should make clear that the safety regulatory scheme adopted in S. 1108 constitutes the full scope of Federal regulation of commercial motor vehicle safety. Language to achieve this end is needed even to the extent S. 1108 excludes from its scope only lightweight vehicles of 10,000 pounds GVWR and less. Without such an amendment, it might be argued that OSHA regulation of commercial motor vehicle safety with respect to trucks under 10,000 pounds GVWR was intended by the Congress. Thus, we support the following two amendments in conjunction with our amendment to § 304(2).

First, a new section should be added to Title III of the bill which would amend 49 USC § 3102(b) by adding a new paragraph 3 to that subsection, to read as follows:

"(3) The authority provided to the Secretary by this subsection does not apply with respect to the operation or maintenance of vehicles with a gross vehicle weight rating of 15,000 pounds or less. However, for the purposes of 29 U.S.C 653(b)(1), the Secretary shall be considered as having exercised regulatory authority with respect to such vehicles to the same extent that the Secretary exercises authority under this subsection with respect to vehicles with a gross vehicle weight rating greater than 15,000 pounds."

Similarly we would add a new subsection to § 306 to S. 1108 which would read as follows: "For the purposes of 29 USC 653(b)(1) the Secretary shall be considered as having exercised regulatory authority with respect to vehicles rated at 15,000 pounds GVWR or less to the same extent that the Secretary exercises authority under this subsection with respect to vehicles with a gross vehicle weight rating greater than 15,000 pounds."

On a related point, we also urge the Committee, in its further consideration of S. 1108, to ensure that any regulatory scheme adopted respecting commercial motor vehicles provide for the primacy of the Secretary of Transportation with respect to safety regulation. Duplication of regulation between DOT and OSHA would create an unfair and unjustified burden on the operators of vehicles without any countervailing public benefit. Even assuming the amendments we suggest with respect to lightweight vehicles are adopted, other amendments in this area are required to avoid the imposition of duplicate regulation on the operators of higher rated vehicles.

IV. *Cargo insurance.*—While the foregoing discussion of lightweight vehicles focused on an ABA concern with respect to vehicles used in distributing final products, our concern with cargo insurance arises from the use of trucks to supply bakeries with the ingredients needed for their products.

The principal ingredient in bakery products is wheat flour; other important ingredients utilized in such products include cocoa and sugar. In supplying their bakeries with these and other raw materials used in the production of bakery products, ABA members rely extensively upon the service of for-hire motor carriers. Such motor carrier service is particularly essential for movements from rail bulk distribution points to "off-track" bakeries which are not served by rail.

At present, the Interstate Commerce Commission, pursuant to 49 USC § 10927(a)(3), has regulatory authority over the cargo insurance maintained by motor common carriers. That authority has been exercised in rules promulgated at 49 CFR § 1043.2(b) which provide that motor common carriers must maintain a minimum of $5,000 of cargo insurance for loss of or damage to property carried on any one motor vehicle, and a minimum of $10,000 for loss or damage per occurrence. These minimum dollar amounts have remained unchanged since 1976. The ABA believes that these cargo insurance minimums are so inadequate that they do not provide any meaningful incentive for safe motor carrier operations and that, as a result, legislative action is warranted to increase them.

This inadequancy of the present minimum levels of cargo insurance is illustrated by reference to the value of the commodities shipped by ABA members to their plants. For instance, the present value of a truckload of cocoa is approximately $70,000; a truckload of sugar has a value of approximately $55,000. Other products as diverse as meat, electronic equipment, cosmetics, and razor blades also have truckload values many times the present minimums, with a truckload of meat, for example, having a value of about $40,000. Notwithstanding the fact that the shipments they transport may be worth more than 10 times that amount, motor common carriers are today nevertheless required to maintain cargo insurance of only $5,000.

The ABA believes that the minimum level of cargo insurnce required to be maintained by motor common carriers should be legislatively established at $50,000, both per vehicle and per occurrence. Not only will such an increase more realistically reflect the value of motor carrier shipments moving on our nation's highways, but, more importantly, such an increase will contribute to increased highway safety. As a simple matter of economics, a common carrier which must maintain, by self-insuring or through an insurance carrier, $50,000 of cargo insurance rather than $5,000 will in all likelihood take greater measures to guarantee the safety of that cargo, including measures to prevent its loss or damage through highway accidents. While this is not to suggest that the majority of motor carriers today do not assiduously endeavor to protect the shipments they transport from loss and damage, the fact is that a motor common carrier operating with leased, rather than owned, equipment and with few assets to satisfy any claims against it, faces an exposure of no more than $5,000 (or $10,000 per occurrence) for cargo lost or damaged in an accident. An increase in that exposure to a level bearing a more meaningful relationship to the value of the commodities transported will be an additional incentive for such carriers to increase the measure of care they exercise in transporting the traffic tendered to them.

Such an amendment can also be expected to result in the insurance industry taking more stringent measures to improve carriers' safety performance. These measures would most likely include, among others, increased attention to the safety of a carrier's equipment, more careful consideration of its overall safety record, and increased insurance premiums if its safety record in protecting cargo is unsatisfactory. These measures will also serve to further the common goal of highway safety.

In addition to increasing the minimum levels of cargo insurance, the ABA also suggests that authority over such insurance be placed in the Department of Transportation, the agency with primary responsibility for highway safety matters. This approach was taken in the Motor Carrier Act of 1980, which, as you know, authorizes DOT to establish minimum levels of public liability and property damage insurance for motor carrier transportation.

Accordingly, the ABA requests that Section 306 of S. 1108 be amended by redesignating subsections (b), (c), (d), and (e) thereof as subsections (c), (d), (e), and (f), respectively, and by inserting after subsection (a) the following new subsection:

"(b) Within 180 days following the date of enactment of this Act, the Secretary shall establish regulations requiring that the minimum level of security required to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of a motor common carrier for transportation shall be $50,000, or such greater amount as the Secretary shall prescribe."

In addition, the following conforming amendment to Section 10927(a)(3) of the Interstate Commerce Act should be made by the addition of a new section to Title III of S. 1108, to read as follows (the addition to Section 10927(a)(3) is indicated by underscoring):

"Sec. . Section 10927(a)(3) of the Interstate Commerce Act (49 USC § 10927(a)(3)) is amended by changing the first sentence thereof to read as follows:

" 'The Commission may require a motor common carrier providing transportation under a certificate to file with the Commission a type of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor common carrier as the result of transportation provided under this subtitle, in an amount not less than such amount as the Secretary of Transportation prescribes pursuant to the provisions of Section 306(b) of the Highway Safety Act of 1983.' "

V. *Other concerns with S. 1108.*—As the baking industry does operate the third largest fleet of trucks of U.S. industry groups, our concerns with S. 1108 extend to a number of other issues. We also support amendments to address the following problems.

The ABA believes that S. 1108 should be amended to make clear what we believe to be its intent, that DOT be requird to consider costs and benefits before promulgating any new regulations or revising existing regulations. This could be achieved in S. 1108 by deleting the words "where practicable" from § 306(a), at page 25, line 2, and by striking the words "revising existing", at page 25, line 3, and inserting in lieu thereof the words "establishing or revising". Further, to ensure that costs and benefits are considered in commercial motor vehicle safety regulatory proceedings, it is not sufficient to so provide in § 306 of S. 1108. A conforming change must also be made to the present statute. Therefore, we would add a new section to Title III which would amend 49 USC § 3102(b) by adding a new paragraph, to read as follows:

"(4) The Secretary shall consider costs and benefits before adopting any regulations or revising existing regulations pursuant to the authority of this subsection."

We would hope that making such clear provision for cost/benefit analysis would be noncontroversial; there is always time for an agency to at least consider costs and benefits before reaching regulatory decisions.

We also support efforts to provide for greater national uniformity in the regulation of commercial vehicles. We have previously discussed the need for uniformity as between regulatory actions by different Federal agencies. The need for uniformity is perhaps even more important as between state regulatory schemes and those of the Federal government. We would support amendments to the legislation to provide for preemption of state or local regulations which in any way differ from Federal regulations respecting commercial motor vehicle safety.

We are opposed to the provisions in S. 1108 to authorize the imposition of civil penalties for violations. While we understand the argument that such sanctions are needed to put teeth into regulatory requirements, we are deeply concerned that such penalty authority will, in practice, simply result in the imposition of high fines for paperwork and minor violations. If civil penalty authority cannot be deletd from the bill, we would at least strongly urge that the penalty levels in the bill be reduced and/or focused on major safety violations.

Lastly, we would also support an amendment to modify the procedural framework for the exercise of the authority in S. 1108 for DOT to provide exemptions from its regulatory requirements. As worded, the exemption authority of § 306(c) appears to place an undue procedural burden against the grant of waivers by requiring the secretary to find both that a proposed waiver is in the public interest and that it is consistent with the safe operation of commercial motor vehicles. We suggest that the framework for decision be worded more neutrally. Thus, we would strike the word "in" on page 26, line 17, and insert in lieu thereof the words "not contrary to" and on page 26, line 18, we would strike the word "consistent" and insert in lieu thereof the words "not inconsistent". Under this revised standard the Secretary would still reject waiver requests not consistent with safety.

VI. *Summary and Conclusion.*—The ABA, whose members are the operators of a significant number of vehicles, is deeply concerned with efforts to improve truck safety, but is also very concerned that S. 1108, as introduced, will simply result in unnecessary regulation of local delivery vehicles rated at less than 15,000 pounds GVWR. With respect to all vehicles operated by our members, we are also concerned that the bill should provide for greater uniformity of regulation by different Federal agencies and as between the Federal government and the states. It should also require that costs and benefits be at least considered before any regulatory action is taken. While we all share the goal of safety in trucking operations, we think it is particularly important to pursue that goal in a manner which does not inadvertently result in an unintended paperwork burden on the operators of lightweight trucks, especially as the safety of operation of those vehicles is apparently not a prime motivating force for enactment of this legislation.

The ABA looks forward you, the oportunity to work with you, the Committee, and staff on all of these matters and, if favorable action can be taken with respect to our concerns, we would be pleased to work with the Committee in support of enactment of the legislation by the full Congress.

We thank you in advance for your consideration of these views.

Sincerely,

Paul C. Abenante,
Director of Industrial Relations,
Ira H. Dorfman,
Director of Legislative Affairs.

Western Wood Products Association,
Portland, Oreg., July 11, 1983.

Hon. John C. Danforth,
U.S. Senate, Washington, D.C.

Dear Senator Danforth: Western Wood Products Association is a major lumber manufacturing trade group representing manufacturers in the twelve Western United States, which manufacture over 60 percent of the softwood lumber produced in the Western U.S. Many of the companies represented by the association operate truck fleets in the course of their own manufacturing, processing and retailing business operations.

WWPA members have a strong concern for safety as does the Committee on Commerce, Science and Transportation. In this regard, we would like to submit the following comments on S. 1108:

Title III of S. 1108 has appeared as proposed legislation in various forms since the 95th Congress. WWPA has been supportive of such legislation with some reservation. At this time we are less convinced of the need for Title III of the legislation. This is not because we have changed our views on individual sections of the bill but because Congress has in recent years already enacted what we consider to have been important provisions included in predecessors to Title III of this bill. In particular, the 97th Congress enacted legislation strengthening the National Driver's Register and authorizing the DOT Highway Safety Grant Program. In addition, on an important matter not raised in predecessor legislation to Title III, Congress has passed drunk driving legislation and this committee is now considering strengthening that legislation in Title II of this bill.

We have altered our prospective because of improvements made in truck and automobile manufacturing along with technological improvements that have resulted in improved quality of vehicles with a salutary effect on safety. Also in contrast with year-to-year statistics in past years 1980 and later figures show decreases in fatalities in truck related accidents.

There are few provisions in Title III directed at specific safety programs and therefore, we wonder whether this proposed scheme is a desirable one in the context of broad considerations which the Congress and the public in general have been increasingly applying to regulatory statutes. Will regulation so developed achieve the intended goals (in this case of safety improvement) or will they just result in more paperwork and costs?

Our broad concern is that many of Title III's provisions are not as directly related to safety benefits as other safety provisions recently enacted. For example, we believe that the enhanced enforcement manpower that can be made possible from the recently enacted safety grant program can definitely keep more unsafe vehicles and drivers off the road. We also believe that the National Driver's Register has a clear safety benefit. On the other hand we do not necessarily agree that changing the overall regulatory framework will yield safety benefits.

Over the years we have become increasingly concerned because of the regulatory and paperwork burdens that have resulted in the imposition of various and differing requirements by state and local governments. We feel strongly that the bill does not do enough to promote national uniformity in commercial motor vehicle safety regulations.

In line with these concerns we wish to offer specific comments on several aspects of the legislation.

Uniformity and preemption of local authority

A feature of the bill is that by virtue of definitions DOT would regulate truck movements that take place solely within a state. Though this aspect has the appearance of tending to promote uniformity, the bill would leave broad opportunities for state and local governments to impose added and differing regulations. We feel that the Bureau of Motor Carrier Safety should be given co-extensive authority with state and local governments. State and local governments should be prohibited from independent regulatory action in the areas of BMCS' authority. We believe that a state or locality wishing to improve truck safety regulation should not be allowed to act straightforwardly and independent under its own authority.

Trucking, being an Interstate business, begs for uniformity of regulations under a common statutory formula.

Uniformity in hazardous materials transportation regulations

Also on the subject of uniformity we commend the sponsors of S. 1108 for recognizing that there is a need for uniformity with respect to hazardous materials transportation regulations. However, our view is that even greater uniformity is required than would be provided by the bill.

As to specific hazardous materials issued, we feel that the committee is moving in the right direction by recognizing the need to address questions concerning materials routing.

Uniformity of vehicle inspection

Again with respect to the uniformity issue, we believe that an annual vehicle inspection provision can do a lot towards getting improperly maintained equipment off the road.

Section 313, by establishing a Federal annual inspection requirement, points to the proper direction. However, as drafted it is not preemptive and would lead to additional state and/or local inspection requirements inconsistent with Federal requirements. We favor broad preemption of local authority. However, if the Congress will not so act in general, we feel that such should at least apply to the area of vehicle inspection.

Cost and benefits

We note that Section 306 includes a requirement that DOT consider costs and benefits in rule making procedures in certain cases. We suggest that this bill strengthen the requirement that DOT *must* do so before issuing any rules. We do not believe that any such mandate should preclude DOT from adopting costly regulations in the name of safety but we would prefer that it be abundantly clear that DOT must always consider cost/benefits when promulgating new or revising current regulations.

Penalty authority

WWPA does not agree that the DOT should be empowered to administratively impose civil penalties for violation of rules, including paperwork violations. We agree that violations should call for a penalty, however, we would prefer a system administered by the judicial branch rather than the executive branch.

Safety fitness certification

We also wish to support the need for revision of present procedures for safety fitness certification of carriers seeking new or expanded operating authority as is called for by Section 314. We suggest that Section 314 be made clear as to intent wherein new procedures to be adopted would supercede all present requirements concerning safety fitness and safety ratings.

Summary and conclusion

Above we have setforth a few specific concerns with the legislation, the broadest of which is that Title III contains relatively few provisions with clear safety benefits. We do believe that an annual inspection requirement can be made to be a truly effective safety tool. We also see a need to revise the safety certification process.

However, we believe that most of Title III will not yield safety benefits because most of the Title would only establish a revised regulatory scheme. It is problematical whether any such effort will produce beneficial results for the public.

We feel it is very important that the legislation take a strong preemptive stance. We do not wish to see what is already a serious problem facing Interstate operations as a result of a conflicting state regulations further compounded.

Therefore, at this time we are unable to offer general support for Title III.

Sincerely,

K. L. Patrick, *Director, Safety.*

American Bus Association,
Washington, D.C., July 13, 1983.

Hon. John Danforth,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

Dear Senator Danforth: I want to thank you again for affording ABA the opportunity to testify on Title III of S. 1108 several weeks ago. Both Jack Dwyer, representing ABA's Safety Committee, and I are most appreciative.

As a follow-up to our testimony, I want to reemphasize the concern and interest of the intercity bus industry in highway safety. An essential element of this is certification of the safety fitness of all buses on the road. Not only must safety be the number one criterion for entry into the business, but it must be a continuing requirement. Once more, we would urge that Section 314 of S. 1108 be made retroactive to November 19, 1982, the effective date of the Bus Regulatory Reform Act.

A recent accident of a private, not-for-hire bus which left two passengers dead speaks well for expanded safety jurisdiction. I am enclosing an article from the Louisville Courier Journal of July 8, 1983 for your information. Unfortunately, this accident is not an isolated incident; it is, rather, much too commonplace. We all are worried.

Senator, we commend your efforts in the area of commercial vehicle safety as we, of course, continue to commend your diligent work in the last Congress on regulatory reform. Please do not hesitate to call on us if we can give you any additional information.

Kindest regards,

Norman R. Sherlock,
President and Chief Executive Officer.

National LP-Gas Association,
Arlington, Va., July 20, 1983.

Hon. John Danforth,
Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

Dear Senator Danforth: The National LP-Gas Association (NLPGA), a member of the Hazardous Materials Transportation Coalition, would like to clarify its position with respect to S. 1108, the Highway Safety Act of 1983, and the testimony presented by Mr. Frank Shafroth before the Senate Commerce Committee on July 13, 1983. We ask that this statement be made a part of the official record of that hearing.

NLPGA is the national trade association of the LP-gas industry with a membership of about 4100 including 47 affiliated state and regional LP-gas associations representing all 50 states. The membership of NLPGA represents all segments of the LP-gas industry (principally propane) including producers, transporters, wholesalers, and retailers of propane gas, as well as manufacturers and distributors of associated equipment and appliances. The largest segment of our membership, however, consists of retail propane gas distributors, from small "mom and pop" independent LP-gas dealers to large multistate marketers.

Since LP-gas has been designated a hazardous material pursuant to the Hazardous Materials Transportation Act of 1974 (HMTA) and since approximately 94 percent of LP-gas shipments annually go by truck, this legislation is of direct interest to us. For this reason, we have been an active participant in the work of the Hazardous Materials Transportation Coalition almost from its inception. We were a participant in the Denver Conference last September and many of the principles and positions of the Coalition which have been forged through numerous meetings and many negotiating sessions over the last couple of years are those which our Board of Directors embraced nearly three years ago. These principles include the concept of uniformity of regulations, coordinated enforcement efforts, and enhanced emergency response activities. Although our Board of Directors has opposed the concept of prenotification, we recognize the need for information and support a study of information now available to federal, state and local governments in order to address this subject on a more uniform and coordinated basis.

The principal purpose of this letter is to emphasize to you and the Committee our concerns over the financing portion of the Coalition's recommendations. Although our leadership is continuing to review the recommendations of the Coalition, at present we cannot embrace the concept of a registration and "user fee" on the LP-gas industry for the purpose of financing the training and/or equipping of state and local emergency response personnel. For over three decades, this association and our affiliated state entities have maintained an active program of training and education for fire service personnel. The objective of this effort is to provide the information necessary to permit these individuals to deal with any emergency situation involving LP-gas that might arise. Working through our affiliated state associations, close contact and cooperation is maintained with state departments of fire prevention and state fire marshals. Organized training programs are conducted either onsite at the local fire house or on the premises of local LP-gas dealers. Indeed, many dealers throughout the nation maintain their own training programs for local fire companies in addition to the level of effort being maintained by their respective state associations.

As an example, I am enclosing some information which was recently sent to all members of the New York LP-Gas Association encouraging individual LP-gas dealers there to conduct their own training programs for local fire companies. This is exemplary of the programs being conducted in all other states. In your home state of Missouri, the University of Missouri Fire Training School has an excellent program for training firemen in the handling of LP-gas emergencies using equipment and expertise donated by the Missouri LP-Gas Assocation. In addition, the Missouri association annually sponsors fire schools around the state, augmented by individual members who hold their own fire and emergency training programs statewide. In 1982, the Missouri association sponsored 15 fire demonstrations, hosting between 45 and 50 fire companies.

As you can begin to appreciate, Senator Danforth, the independent dealer members of these LP-gas associations believe that a fee assessed on them for the purpose of funding hazardous materials emergency response training would be redundant and would represent a form of "double taxation". Because of the available resources of thousands of local LP-gas dealers and our network of affiliated state associations, our organization is perhaps unique among industry Coalition members. The user fee concept may be supported by other industry Coalition members largely because it represents a trade-off; participating state and local government entities would agree to forgo separate fees in return for receiving these funds. As a practical matter, this would not represent much of a trade-off for the LP-gas dealer who is located, for example, in or around a small Missouri town and therefore is not exposed to a multiplicity of jurisdictions as might be the case with an interstate transporter. Finally, the concept of sending money to Washington to have it laundered through the bureaucracy and returned to the local jurisdiction is contrary to the basic philosophy of the members of this industry who would rather do it themselves locally to be certain the job is done right.

Again, we wish to emphasize that we believe in the work of the Hazardous Materials Transportation Coalition and we support the bulk of the amendments being recommended by the Coalition and the intent of your legislation, S. 1108. We would be happy to discuss our position with you further and we look forward to working with the Committee staff as you proceed to mark-up on this legislation. We only ask that you approach these recommendations in an equitable fashion which will take into account the very active participation of the members of this industry on the local level in emergency response training and education.

Respectfully submitted.

DANIEL N. MYERS,
Vice President, Government
Relations and General Counsel.

DARTMOUTH MEDICAL SCHOOL,
Hanover, N.H., July 29, 1983.

BOB PACKWOOD,
Chairman, Senate Committee on Commerce, Science, and Transportation,
Washington, D.C.

DEAR SENATOR PACKWOOD: We are writing in regard to legislation Senator Danforth introduced (S. 1108) which contains provisions dealing with child passenger safety. It is our understanding that the Senate Commerce Committee has already held hearings on this particular aspect of the legislation, but that the record is being held open until August.

In the legislation, there is a stipulation that a child must be restrained by a car seat until four years of age. Although we support the legislation on the whole, we feel that this particular stipulation is actually counterproductive. There are several reasons we feel this way.

For one, many large four years olds cannot fit comfortably in a car seat. These children should have the option of legally and safety riding restrained by a seat belt.

Families that are under severe financial constraints should be considered. For example, in a low income family with four children under four (not uncommon). The parents should not be forced to purchase or rent four toddler seats. A child who is able to sit up on his own many safety use a seat belt.

Also, friends and relatives often transport toddler aged children. Moving toddler restraints from vehicle to vehicle presents many problems. A few seats won't fit in various vehicles. Some seats must be attached to permanently fixed bolts in a car by anchor straps. Those toddler aged children can ride safety secured by a seat belt.

One of the main desires among child passenger safety advocates is to get children into the habit of buckling up so that they are still riding restrained when they become school aged and older. Allowing children to ride in seat belts helps them start a good habit. Forbidding the use of seat belts may instill the false notion that seat belts are "unsafe" for children.

To sum up, we suggest that legislation allow children 0 to 5 to ride restrained either in a seat belt or in a car seat. Thank you for considering our request.

Sincerely,

Deborah M. Prum,
Program Coordinator.

Sioux City, *August 4, 1983.*

Hon. Bob Packwood,
Chairman, Senate Committee on Commerce, Science, and Transportation
Washington, D.C.

Dear Senator Packwood: In these United States we have over 42,500 miles of interstate highways, 100 beltways circling our major cities and a staggering number of secondary and gravel roads. On these highways and beltways travel 150 million automobiles. Many of them will never reach their destination without becoming disabled.

The most frequent way a disabled vehicle along the roadway receives assistance is by raising the hood or tying a white cloth to the aerial or door handle.

I would like to suggest at this time a National Highway Safety Code. I have developed a kit with a number related code that consists of a sticker, rod holder, rod and numbers 1 thru 9 that indicates the problem the disabled motorist has. By displaying the number that represents the disabled motorists problem, the motorist could communicate with passing motorists and receive assistance.

It has been suggested that the stickers be in English, Spanish, and French. The number symbolize the following: 1 Flat Tire; 2 Need Water; 3 Need Gasoline; 4 Need a Ride; 5 Dead Battery; 6 Tow Truck; 7 Phone Call; 8 Help on the Way; 9 Police.

The kit would contain rod, rod holder and numbers, day orange in color. Overall size of the kit would be 4 wide, 8 long and 2 in depth. By using the 2 and 5 as one number and the 6 and 9 as one, we could make a more efficient kit.

I have consulted with manufacturers and have been advised that the kit can be made of durable plastic to withstand all the elements of weather conditions. The rod holder has been designed to be attached to any window, either on the left or right side depending on the side of the roadway where you become disabled.

The kit can be stored anywhere, under the seat, in the trunk, and in a few cases in the glove compartment. The kit requires no maintenance or updating and is self-sustaining. As of this date, suggested manufacturer's cost per kit, plus shipment to each states DOT, is approximately $2.65.

In the past two years I have contacted all of the states DOT, State Police, Governors, Major Oil Companies, all the automobile manufacturers, automobile related agencies and the National Highway Traffic Safety Administration. Overall, I believe it was their opinion it was a good idea and to succeed it should be pursued at the national level. In addition, none of the states knew of any existing laws banning the sale of the kit in their states. The Chief Counsel at NHTSA concluded, therefore, that I would not be prohibited from offering this device for sale as motor vehicle equipment.

For the code number system to be a success it must be recognized at a national level. It was also brought to my attention to educate and inform the public of such a code would be a monumental task. I feel notifying the public is one of the easier tasks. By simply distributing two stickers at the time of new registration 84, all drivers would have access to the code.

I have given a great deal of thought to producing an item which could be marketed through as variety of outlets, is compact for convenient storage and is priced to allow all interested parties to purchase.

It is amazing the assortment of automobiles disabled along our highways. They play no favorites—all years, styles and makes, and as to where they break down—bridges, intersections, open roadway and never when you have time to spare.

In closing I would like to remind you of the frightening experience for our elderly, handicapped, and young mothers with children of being stranded along our highways. Due to the uncomplicated design and the ease of set-up, and national recognition of the code, virtually every one could use and understand the system. The kit would serve to augment the C.B.er's, phones along our highways, and other warning systems already available. From California to New Jersey, from North Dakota to Texas, if 1 car in 10,000 broke down daily, nationwide, the kit would be used approximately 15,000 times. In 100 short days we would reach the million and a half mark. This in itself shows there is a need. I would like to thank you for your time and I would welcome any questions.

Sincerely,

SYLVESTER P. GAGNON.

SAFETY DEVELOPMENT SYSTEMS,
Haines, Oreg., August 10, 1983.

Hon. BOB PACKWOOD,
Committee on Commerce, Science, and Transportation, Washington, D.C.

DEAR SENATOR PACKWOOD: Thank you for helping me with direction to acquaint the committee with Accelerator Actuated automotive rear signals. I find it is most difficult to condense ten years of work in this field into a letter. However, I will give a short historical resumé of the experiences that have convinced us this function should be included in S. 1108 both for auto and transport.

Reasoning for the Deceleration Alert System (DAS)/Positive Accelerator Positioning Signal (PAPS):

The DAS/PAPS system operates before the brake system and signals an instinctive reaction by the operator of the DAS control motor vehicle to the following drivers.

Example: Ask yourself, "What is the first thing you would do if a child dashed out in front of your vehicle?" Almost always the answer is, "I would put my foot on my brake".

Not true! You instinctively remove your foot from the accelerator and then go to your brake. Perception-Intellection-Emotion-Volition (P.I.E.V.) formulae comes into effect. You will in fact travel at least 61 feet at 55 MPH before your foot reaches the brake pedal!

In the above situation, the operator of the vehicle following your DAS controlled vehicle will be alerted when you remove your foot from the accelerator, he will instinctively react and go for his brake.

The result is that each vehicle will be decelerating at a like speed and a possible rear-ender will be prevented or the severity of a collision greatly reduced. It was with this reasoning we began our field work.

Field work

At first, units were installed and tested with our own vehicles and as many variations for installations as we could manage in our own locale.

Our field work expansion began in 1975 with the Secret Service on armored limousine No. 262 for the Kissinger detail. Since that time we have developed the IVC-P-75 for Presidential detail, State Department, Supreme Court, Governors, Mayors and lately, the Defense Department. All of these IVC-P-75 units incorporate the Positive Accelerator Position Signal (PAPS) concept which is the accelerator activated signal and these units are reserved for sale to government agencies only.

Heavy trucking

A larger unit, DAS 6200 ATL, is being used on logging trucks, freight trucks, city delivery trucks, fuel trucks, dump trucks and many other variations. Reports from the operators confirm the system has reduced tailgating; given better visibility in rain, snow, dust and fog; signaled to the rear of the truck that the equipped vehicle was braking steadily on Jake Brake (compression brake) or was dynamiting (loss of air pressure). Drivers also reported they spent less time looking in their rear view mirror as tailgating by the following vehicle is greatly reduced. The Positive Accelerator Position Signal (PAPS) concept is used in this application.

This is but one of many reports we have received from users of the Deceleration Alert System:

Mr. Harvey Ellis, who drove one of the DAS test trucks for some 70,000 miles, came into my office shortly after he had had an accident involving a fatality. He, of course, was quite upset because his truck had rear-ended an automobile in which an old gentleman was killed. Mr. Ellis's main concern was that if the auto he struck had been equipped with a Deceleration Alert System, he would not have hit him. His reasoning? The auto was parked alongside the highway. Ellis was coming off a grade with a cement bulk truck at approximately 55 MPH. As Ellis approached the parked auto he looked into his rear view mirror to check following traffic in order to pull over into the passing lane. When he looked back, the auto had pulled out directly in front of him and was struck by the cement vehicle. The occupant of the auto was killed. If the struck vehicle had had a Deceleration Alert System installed, Ellis would have known the following facts:

1. The ignition was 'on' and that the engine was probably running. (When the ignition is on, amber lights are lighted in the rear.)
2. If the operator of the struck vehicle was moving forward, Ellis would have observed a 'green' light to the rear of the struck vehicle, indicating acceleration.
3. If the struck vehicle had had a Deceleration Alert System, Ellis would have known exactly what the operator of the struck vehicle was doing and could have reacted sooner and avoided the accident.

Motorcycles

A special unit called 'Cyclert' was created and tested with like results for motorcycles. Operators approved of the system as it gave greater security from tailgating, made their vehicle more visible and gave them 50 more feet in their "Circle of Safety". Again the PAPS concept of accelerator activated signals are used.

Services

We have worked with the Coastguard, Navy and Air Force with encouraging results. A special unit was conceived for the Boston Naval Area and tested for more than a year. Some reactions were expressed as those above and PAPS concept was used.

School buses

Local boards allowed the use of the Deceleration Alert System (DAS) on a couple of their buses for tests. Results were positive as those above. The State of Washington gave two school districts a grant to test the concept. Results were positive with some added benefits. As proof, when new school buses were ordered by these districts, DAS was specified. Systems for flashing signals of warning on most school buses must be activated manually by the drivers. DAS is an automatically instigated signal.

Mass transit

The main effort in development of the commercial version (DAS) of the PAPS concept is in the mass transit systems. Being a small company, our approach to this sector was directly from our company to the end user. Penetration is most encouraging. Transit properties purchased the systems directly from our company and installed the units on their coaches. Letters and test reports these properties indicated satisfaction of operation, statistical and practical reports of rear end collision reduction vary from 62 percent upwards of 80 percent to no rear enders at all. Through the course of use, many transit properties are including the DAS/PAPS in their orders for new buses. We are supplying the bus manufacturer with the specified system for installation at the Original Equipment Manufacturers (OEM) location in both the USA and Canada.

Legislative

The State of Oregon Legislators first approved use of the concept in 1973. Washington, Utah and Idaho followed thereafter. Recently, the State of California approved the concept of accelerator actuated signals as of January 1983. Former Representative Al Ullman introduced a bill in the U.S. House in 1973 and supported legislation in Oregon for passage. Most States accept some versions of the PAPS concept.

Research and development

With the many millions of miles of experience in highway use of the concept, the commercial adaption of the concept has proven to be reliable and trouble free. Our experiences of twenty years in the automotive retail and repair business indicated the design and operation of the system had to be of high quality, positive operation and inexpensive. Our version of the PAPS concept, the Deceleration Alert System (DAS) is simple, rugged and inexpensive. One parts package for all vehicles can be installed by the layman and can be transferred from one vehicle to another. Years of exposure of the system to all kinds of use convinced us our original plan is correct.

Cost

Cost of the commercial system at retrofit is approximately .0009428 percent of the cost of a new bus and .0079 percent of the cost of the average new automobile. At the O.E.M. position, costs are approximately .00048 percent of a new bus and .003 percent of a new automobile.

Title I, 101 requires high level mounted brake lights and is an excellent low cost safety measure. Our experiences in the field prompt us to encourage the committee to amend this section to include accelerator actuated system in conjunction with high mounted brake light. We sincerely believe it should also be included in Title III. Studies under "Improved Commercial Vehicle Conspicuity and Signaling Systems," NHTSA contract DTNH-22-80-C-07034, clearly indicate serious thought should be made to include the PAPS concept in any new regulations.

I am enclosing a random collection of letters and brochures for your information. If you desire more, I will be pleased to provide it. We have available video tape and simulators that demonstrate the functions and versatility of the system.

I sincerely hope this letter, with the enclosures, will alert the Committee to the effectiveness of the Positive Accelerator Position Signal (PAPS) concept and the importance of inclusion in S. 1108.

I look forward to hearing from you.

Sincerely,

RICHARD H. CAMP, *President.*

U.S. ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
Washington, D.C., August 16, 1983.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On July 13, 1983, the Committee on Commerce, Science, and Transportation held a hearing on Title IV of S. 1108, the "Highway Safety Act of 1983." It was agreed that the Environmental Protection Agency (EPA) could provide its views for the record, rather than testifying on this legislation. To follow are EPA's views on Title IV of S. 1108.

We feel that this bill, the "Hazardous Materials Transportation Act Amendments of 1983," fails to recognize EPA's expertise, experience and capability in the management of hazardous substances. EPA has authority under Section 311 of the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 respectively to respond to releases of oil and hazardous substances. Under the CWA, EPA and the Coast Guard respond to and have programs for the prevention of releases of oil to the navigable waters of the United States, whether such releases emanate from transportation or nontransportation related sources. Similarly, under CERCLA, EPA and the Coast Guard respond to releases of hazardous substances to all environmental media from both transportation and nontransportation related sources. EPA also has authorities under the Resource Conservation and Recovery Act (RCRA) to regulate the activities of generators, transporters, treaters, storers, and disposers of hazardous wastes. This proposed legislation appears to duplicate existing EPA authorities for hazardous waste response. Further, this legislation proposes contingency planning and response training activities that indicate no recognition of long-established Federal activities in these areas. We view this legislation as redundant to Federal authorities and EPA implementation of programs for comprehensive management of responses to hazardous material releases.

Under the National Oil and Hazardous Substances Contingency Plan (NCP), EPA has several mechanisms for assuring thorough Federal and Federal/State/local coordination in this program area. The National Response Team (NRT) consists of a permanent membership of Federal agencies with interests or responsibilities relating to oil and hazardous substance response actions. The NRT has regularly scheduled planning and coordination meetings chaired jointly by EPA and the Coast Guard and is also convened on an emergency basis as necessary. The Regional Resonse Team (RRT) is the regional equivalent of this membership and includes State and local representation to assure coordination of Federal and State interests in specific response actions. These teams are operational and are effectively accomplishing their charter for organized, efficient, and cooperative responses to hazardous substance releases.

Additionally, in its regional environmental emergency response program, EPA works with the States to set up State contingency plans and agreements. EPA distributed guidance to States in July 1982, on how to develop a hazardous substance contingency plan that would meet the requirements of CERCLA. This guidance detailed criteria for chain of command, coordination among response entities, determining response priorities and response resources, and a system for evaluating release incidents. These plans will form the basis for State emergency response to releases of hazardous substances covered by CERCLA. Further, considering that EPA promulgated the NCP and is responsible for updating the Plan and preparing guidance thereto, we believe EPA should continue to have a strong role in providing planning assistance to States to assure fully coordinated emergency response programs pursuant to CERCLA and the NCP.

The EPA has the authority to organize and implement training programs in the environmental emergency response area, and has established programs for training Federal, State and private sector personnel in countermeasures for hazardous substances in environmental emergency response situations. These programs have been expanded significantly in the past several years and are reaching a greater number of Federal, State, and local officials involved in response activities.

Finally, the EPA also has the lead authority under the CWA (section 311) and CERCLA (sections 102 and 103) for setting levels for reporting releases of hazardous substances and for notification of releases of hazardous substances from all sources and into all media.

The EPA hopes the Committee will take into account the breadth of our existing statutory responsibilities and activities as this legislation is further considered.

Thank you for the opportunity to provide these comments. If we can be of further assistance, please contact me.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely yours,

LEE M. THOMAS,
Assistant Administrator.

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